A TREATISE

ON

THE LAW OF SCOTLAND

RELATIVE TO THE POOR.

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A TREATISE

ON

THE LAW OF SCOTLAND

RELATIVE TO THE POOR.

By ALEX. DUNLOP, Esq.
ADVOCATE.

THE SECOND EDITION.

WILLIAM BLACKWOOD, EDINBURGH: AND
T. CADELL, STRAND, LONDON.
MDCCCXXVIII.

TO THE RIGHT HONOURABLE

DAVID BOYLE,

LORD JUSTICE CLERK, PRESIDENT OF THE SECOND DIVISION OF THE COURT OF SESSION, ONE OF HIS MAJESTY'S MOST HONOURABLE PRIVY-COUNCIL, &c. &c. &c.

MY LORD,

When I published the former edition of this Treatise, I refrained from soliciting permission to inscribe it to your Lordship; not from any doubt of your Lordship's disposition to extend favour to my undertaking, but from an apprehension that the merits of the work might not entitle it to your Lordship's countenance. Encouraged, however, by the approbation which it has pleased your Lordship, and other Judges of the Supreme Court, to bestow upon it, I now gladly avail myself of the opportunity afforded by the publication of a second edition, to express, by thus dedicating it to your Lordship, my grateful sense of the kindness I have personally experienced from your Lordship, and my heartfelt concurrence in those sentiments of high respect and esteem for your Lordship's character and conduct as

a Judge, which I share with the profession to which I belong and the public at large.

With the most sincere wish that the country may long enjoy the benefit of your Lordship's important and valuable services, I have the honour to be,

Your Lordship's

Very faithful Servant,

ALEX. DUNLOP.

8, Melville Street,
February 25, 1828.

PREFACE

TO THE FIRST EDITION.

THE alarming increase of pauperism in England, and its steady, though less rapid, progress in some parts of our own country, have, of late years, attracted general attention to the provision made by law for the relief of the poor. The valuable disquisitions and experiments of Dr. Chalmers have thrown much light on the baneful tendency, in a moral and political point of view, of a negligent administration of the Poor Laws; and a very general endeavour appears now to be made throughout Scotland, by those to whom the management of the poor is intrusted, to administer the poor's funds with due diligence and circumspection. Such being the state of public feeling, I have been struck with the want of a treatise containing a brief and practical view of our law touching the management of the poor, and I have attempted, in the following short Treatise, to supply the deficiency. There are many questions relative to this subject which have not been determined by judgments of our Courts. Such questions have either not fallen within my observation, or

are only briefly noticed in these pages. I have, however, endeavoured to collect together, in as concise a form as I could, those principles which have been settled by decisions, or are fixed by statutory enactments; and I trust that the present volume may prove, in some degree, useful to those who, while they are frequently called upon to execute the laws relating to the poor, may not perhaps possess the means of access to more accurate and extensive sources of information.

EDINBURGH,
January 27, 1825.

PREFACE

TO THE SECOND EDITION.

THE publication of this edition has been delayed some time after the former was exhausted, in the hope of being able to add to it, observations on the Law regarding Parish Schools, and certain other parochial matters, which, although forming part of a larger work contemplated by me, on the Church Courts of Scotland, and the law of the several matters falling under their cognizance, might yet have properly accompanied the present Treatise, as the same persons who are concerned in the management of the affairs of the poor, must also take an interest in the law regarding Schools, and the other parish matters to which I refer. This object, however, other avocations have obliged me for the present to abandon; but as a considerable time may elapse before the larger work above-mentioned can possibly be completed, I may, perhaps, at some intervening period, still publish, separately, observations on the parochial matters to which I have alluded. In the meantime, the present edition of the Poor Laws is given to the public, with such additions and alterations as the decisions pronounced since the publication of the former edition

have rendered necessary, and with the correction of such errors as I have discovered.

I have also added a chapter on the "Poor's Roll in the Court of Session;" and have subjoined in the Appendix the necessary formula for enabling Clergymen to grant the certificates requisite for obtaining the benefit of that humane and excellent institution.

In making any alterations or additions, I have endeavoured, so far as in my power, to retain the same numbers to the corresponding paragraphs in the two editions, so as to create as little confusion as possible in regard to references.

8, Melville Street,
February 25, 1828.

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TREATISE

ON THE

LAW OF SCOTLAND,

RELATIVE TO THE POOR.

CHAPTER I.

SUMMARY OF THE STATUTES.

1. The law of Scotland relative to the provision for the poor is founded on statutory enactment. The greater part of our Acts of Parliament, however, have for their chief object the suppression of begging, and that which now forms the principal subject of attention in relation to the poor, is comprised in a few sentences; while the statute-book is filled with provisions intended to put down the hordes of vagabonds and beggars, who, roaming in multitudes throughout the country, lived by levying contributions and free quarters, to the great oppression of the people. The extent of this evil, as it existed even so late as the end of the 17th century, is thus described by Fletcher of Saltoun:—'There are at

'this day in Scotland (besides a great number of families 'very meanly provided for by the church boxes, with others, 'who, with living upon bad food, fall into various diseases,) '200,000 people begging from door to door. These are not 'only no ways advantageous, but a very grievous burden to 'so poor a country; and though the number of them be per- 'haps double to what it was formerly, by reason of the pre- 'sent great distress, yet in all times there have been about '100,000 of these vagabonds who have lived without any re- 'gard or submission either to the laws of the land, or even of 'those of God and nature—fathers incestuously accompany- 'ing their own daughters, the son with the mother, and the 'brother with the sister. No magistrate could ever discover 'or be informed which way any of these wretches died, or that 'ever they were baptized. Many murders have been discover- 'ed among them; and they are not only a most unspeakable 'oppression to poor tenants (who, if they give not bread, or 'some sort of provision, to perhaps forty such villains in one 'day, are sure to be insulted by them,) but they rob many poor 'people, who live in houses distant from any neighbourhood. 'In years of plenty, many thousands of them meet together in 'the mountains, where they feast and riot for many days; 'and at country weddings, markets, burials, and other the 'like public occasions, they are to be seen, both men and wo- 'men perpetually drunk, cursing, blaspheming, and fighting 'together.'[1]

[1] Second Discourse concerning the affairs of Scotland, 1698, p. 24.—The following extract from a letter addressed by a Justice of Peace of Somersetshire to the Lord Chancellor Burleigh, in transmitting to him the calendar of the assizes and sessions held in that county in 1596, exhibits the state of England at that period as nearly similar:—'God is my witness, I do with grief protest, in the 'duty of a subject, I do not see how it is possible for the poor countryman to 'bear the burthens daily laid upon him, and the rapines of the infinite numbers 'of the wicked, wandering, idle people of the land; so as men are driven to 'watch their pastures, their woods, their corn fields; and I may justly say, that 'the infinite numbers of the idle wandering people, and the robbers of the land, 'are the chiefest cause of the dearth; for though they labour not, yet they spend

2. These vagabonds had long greatly abounded; and so early as the year 1424, in the reign of James I., there are three enactments intended to repress them. The purport of the first, 1424, c. 7, is comprised in its title, which declares that 'Sorhares or companies overlyand the 'Kingis lieges, suld be arreisted, and satisfie the 'King and partie.'[1] The second, c. 25, 'of the age and 1424, c. 7.

'double as much as the labourer doth, for they live idly in the ale-houses day 'and night, eating and drinking excessively. This year there assembled sixty in 'a company, and took a whole cart-load of cheese from one driving it to a fair, 'and dispersed it among them. Within this three months I took a thief that 'confessed unto me that he and two more lay in an ale-house three weeks, in 'which time they eat twenty fat sheep, whereof they stole every night one. It 'is most certain that if they light upon an ale-house that hath strong ale, they 'will not depart until they have drunk him dry. And they grew the more dan-'gerous in that they find they have bred that fear in the Justices, and other in-'ferior officers, that so no man dares call them into question; and at a late ses-'sions, a tall man, a man-sturdy and ancient traveller, was committed by a Jus-'tice, and brought to the sessions, and had judgement to be whipt; he, present 'at the bar, in the face and hearing of the whole bench, swore a great oath, that 'if he were whipt, it should be the dearest whipping to some that ever was. It 'strake such a fear in him that committed him, as he prayed he might be deferred 'until the assizes, when he was delivered without any whipping or other harm, 'and the Justice glad he had so pacified his wrath. By this your good Lord-'ship may inform yourself of the state of the whole realm, which, I fear me, is 'in as ill case, or worse, than ours.'—STRYPE'S *Annals*, vol. iv. No. ccxiii.

[1] The act itself is as follows:—'Item, the Parliament Statutes and the King 'forbiddis that na companies passe in the countrie to lye upon onie the Kingis 'lieges, or thig or sojourne horse, outher on kirk men or husbands of the land; 'and gif onie complaint be maid of sik trespassoures to the Schireffe of the land, 'that he arreist sik folk, and challenge them, and tax the Kingis skaith on them; 'and gif they be conviet of sik trespasse, that they be punished, and find bur-'rowes till assyith the King and the partie complainand; and gif sik persones 'takis onie skaith in arreisting them, it sal be impute to themselfes: And in 'case that na complaint be maid to the Schireffe, the Schireffe sal inquire at ilk 'head court that he haldis, gif onie sik faultoures be within his schireffdome. 'and gif onie beis founden, that they may be punished as is before written.'

To shew the correspondence of the earlier English and Scotch statutes, a few excerpts from the former (most of which, however, were repealed, on the establishment of a more complete system,) are given in this and subsequent notes. The following affords a specimen of the style of the English Acts of Parliament, prior to the disuse of the Norman-French:—"Item, ordeignez est et assentuz

1424, c. 25, & 42. 'marke of beggars, and of idle men,' (repeated by c. 42, of the same year,) creates an important distinction between those who are able to earn their own livelihood, and those who are obliged to resort to the charity of others for their subsistence. It directs that 'na 'thiggers be thoiled to beg' between the ages of fourteen and seventy years, unless 'they be seen by the councilles of the 'townes or of the lande, that they may not winne their living 'utherwayes; and they that sal be thoiled to beg, sal have a 'certaine takinne[1] on them,' while all others, 'havand na ta-'kines,' were to be charged 'be open proclamation to la-'bour and passe to craftis of winning of their living, under 'the pain of burning on the cheek and banishing the 'country.'[2] And by a subsequent statute of the same monarch, 1425, c. 66, the Sheriffs are direct-

1425, c. 66.

'qe le statutz faits en temps le noble Roy Edward, aiel notre Seigneur le Roi, 'qore est de Roberdesmen et Drawelatches soient fermement tenuz et gardez. 'Et outre ce est ordeignez et assentuz par restreindre la malice des diverse gentz 'faitours et vagerantz de lieu en lieu currantz de present par paiis plus habun-'dantement qe ne soloient avant ces heures, qe desore les Justices des assizes en 'lour sessions, les Justices de la paix, et les viscontz en chescun contèe aient 'poair dénquere de toutz cielx vageranz et faitours et de leur malfaitz, et sur 'enx faire, ce qe la ley demande. Et qe si bien les Justices, &c. aient desore 'poair de leur examiner diligealment, et compeller de trover seurtée de lour bon 'port par sufficiantz mainparnours des tielx qe soient destreinables si ascune de-'faute feusse dessors trovez en mesmes les faitours et vagerantz, et sils ne poient 'tiele seurtee trover soient mandez al prochaine gaole pur y demorer tanqe la 'venue des Justices assignez pur deliverance des gaoles, les queux en tiel cas 'aient poair de faire sur les ditz vagerantz et faitours issint imprisonnez ces qe 'leur ent semblera mieutz affaire par la ley."—7 Richard II. c. 5;—1383. (Repealed 21 Ja. I. c. 28.)

[1] 'Takinne'—token or badge.

[2] A similar distinction seems to have been introduced by the English statute, 12 Richard II. c. 7, 1388, (repealed 21 Ja. I. c. 28,) which is in these terms—'Item accordez est et assentuz qe de chescun qi va mendinant et est able de ser-'vir ou laborer soit fait de lui come de celui qi depart de hundredes et autres 'lieux susditz sanz lettre testimoignale—et qe les mendinantz impotentz de ser-'vir demurgent es citees et villes ou ils sont demurrantz al temps de proclama-

ed to inquire 'gif ony idle men, that has not to live of 'their awn, be received within his boundes,' and to arrest them, till it be known 'quhairupon they live;' and after setting them at liberty on sure burrowes or pledges, to allow them forty days, to fasten them to lawful craftis; and if they were then found still idle, he was to arrest them again, and imprison them, 'to abide and be punished at the King's 'will.'[1]

3. These rigorous enactments do not seem to have been carried into execution, for in 1427 there appears an act directing inquisition to be made, and a fine to be imposed on those magistrates who had neglected them. 1427, c. 103.

In the next king's reign, a still more severe statute was passed, from which it appears that the bands of beggars had become yet more formidable, going about the country with 'horse, houndes, and uther 'gudes.' The act directs this property to be escheat to the King, and the owners to be imprisoned until his Majesty 'have said his will on them;' and with regard to 'feinzied 'fooles and vagabonds' generally, that they be imprisoned so long as they have any goods of their own to live upon, and then that their 'eares be nailed to the trone or till ane uther 'tree, and their eare cutted off,' and they banished the coun- 1449, c. 22.

'tion de cet estatut. Et si les gentz des e ditz citees ou villes ne voillent ou ne 'poient suffir de les trover qe les ditz mendinantz soi traihent as autres villes, '&c. ou ils furent nez deinz qarrant jours apres la dite proclamation faite et la 'demurgent continuellement pur lour vies. Et qe de touz ceux q'aillent en pil-'rinage come mendinanz et sont puissant de travailler soient faitz come les ditz 'servantz et laborers sils nient lettres testimoïnales de lour pilrinage desouz les 'sealx avantditz.'

1 'Et qe le viscontz, &c. soient tenuz et chargez de receivre les ditz servantz 'laborers mendinantz et vagerantz et les detenir en prison, a la forme avantdite,' —c. 9.

try; 'and gif thereafter they be funden againe, that they 'be hanged.'[1]

The disturbed political state of the country, together with the low moral condition of the people, not only prevented the due execution of the laws, but otherways tended greatly to augment the number of the disorderly gangs which these statutes were intended to suppress. The legislature, however, seem to have hoped, by the increasing severity of their enactments, to supply the want of moral restraint on the part of the people; and accordingly we find, in a few years, that sornars are ordained to be summarily put to death as thieves and reivers by 1455, c. 45, an act again repeated in the next reign by the statute 1477, c. 77, of which the object is stated to be 'for the staunching of masterful beggars and sor-'nares, that daily oppressis and herryis the King's 'lieges;' and by an intervening statute, 1457, c. 79, the Judges at the Justice Aires are directed to take cognizance of such offenders.

1455, c. 45. 1457, c. 79. 1477, c. 77.

4. In none of these enactments subsequent to the statute 1424, c. 25, is there any mention made of the regular poor who, by that act, were permitted to beg, a privilege at a future period exchanged for the right to parochial support. No act relative to this subject appears till the statute 1503, c. 70, in the reign of James IV., which directs the former statute of King James I. to be observed, and points out more distinctly the class who are to enjoy the privilege of begging, including those only who, by reason of physical disability, and of mental or

1503, c. 70.

[1] By 27 Hen. VIII. c. 5, (1535,) it was enacted, that a valiant or sturdy vagabond shall at the first time be whipped, and sent to the place where he was born, or last dwelt, by the space of three years, there to get his living; and if he continue his roguish life, he shall have the upper part of the gristle of the right ear cut off; and if, after that, he be taken in idleness, he shall be adjudged and executed as a felon. (Expired—31 H. VIII. c. 7.—1 Eliz. c. 18.)

bodily weakness, are incapable of maintaining themselves. It ordains the Sheriffs and Magistrates of burghs to allow none to beg within their bounds, 'except cruiked folk, seik 'folk, impotent folk, and weak folk,' under the penalty of a merk for every other beggar found within their jurisdiction. A very important restriction was imposed on those privileged beggars, by the subsequent act of James V. (1535, c. 22,) which enacts 'that na beggars be thoiled 'to beg in ane parochin that ar born in another; 'and that the headesmen of ilk parochin mak 'takinnes and give to the beggars thereof, and that they be 'susteined within the bounds of the parochin; and that 'nane others be served with almous within the bounds 'of that parochin, but they that bearis that takinne alla-'nerlie.'[1] 1535, c. 22.

5. Notwithstanding the provisions for the suppression 'of 'sornars and masterful beggars,' their number seems greatly to have increased during the disorders of the subsequent unfortunate reign of Queen Mary, and the minority of her son. Accordingly, shortly after King James VI. assumed the reins of government, an attempt was made to form a more regular system for the remedy of the evil which had so long grievously oppressed the people of this country. This was done by the act 1579, c. 74, which is the foundation of our present system of poor laws,[2] and is, to this day, the only authority (with the exception of a proclamation of the privy council,) to enforce a compulsory provision for the support of the ordinary poor, the later sta- 1579, c. 74.

[1] By 22 Henry VIII. c. 12, (1530,) it was enacted, that the Justices of Peace, in every county, dividing themselves into several limits, shall give license, under their hands and seals, to such poor, aged, and impotent persons, to beg within a certain precinct, as they shall think to have most need; and if any do beg without his precinct, he shall be whipped, or else be put in the stocks.—(Repealed 21 Ja. I. c. 28.)

[2] See infra, 14. Note.

tutes, which direct assessments to be levied, being for entirely different purposes, and having now fallen into total desuetude. This statute, entitled, an act 'For punischment 'of strang and idle beggars, and reliefe of the pure and im-'potent,' proceeds on the narrative, that the 'Sindrie lovabil 'Acts of Parliament made by our Soveraine Lord's maist nobil 'progenitours, for the stanching of maisterful and idle beggars, 'away putting of sornars, and provision for the pure, in times 'bygane hes not been put to dewe execution, through the 'iniquitie and troubles of the times bypast, and be reassoun 'that there was not heirtofoir ane ordour of punischment, 'sa specially devised, as need required, but the saidis beg-'gars, besides the utheris inconvenientes quilks they daylie 'produce in the commounwealth, procures the wrath and dis-'pleasure of God, for the wicked and ungodly form of living 'used amangs them, without marriage or baptizing a great 'number of their bairns.' It then goes on, 'therefore, now, 'for avoyding of the inconvenientes and eschewing of the 'confusion of the sindrie lawes and actes concerning their 'punischment, standing in effect, and that sum certaine exe-'cution and gude ordour may follow thereanent, to the great 'pleasure of Almighty God, and common weill of the realme, 'it is thocht expedient, and statute and ordained, as weil for 'the utter suppressing of the saidis strang and idle beggars, 'sa contagious enemies to the common weill, as for the cha-'ritabil relieving of aged and impotent pure peopil, that the 'ordour and forme following be observed.'—The 'ordour' of punishment appointed for these 'sa contagious enemies 'to the common weill,' was, that on being convicted for the first time, 'They be adjudged to be scourged, and burnt 'throw the eare with ane hote iron, except sum honest and 'responsal man will, of his charitie, tak and keip the offender 'in his service for ane haill zier;'—'and gif the offender 'leave the service within the zier, he shall then be scourged 'and burnt throw the eare, as foresaid; quilk punischment

'being ance received, he sall not suffer again the like for 'the space of three score dayes thereafter; but gif, at the end 'of the said sixty dayes, hee be founden to be fallen againe 'in his idle and vagabond trade of life, then, being appre-'hended of new, he sall be adjudged, and suffer the pains of 'death as a thief.'[1] The act then sets forth who are to be considered 'as idle and strang beggars and vagabonds, and 'worthie of the punischment before specified;' and these are generally all persons between 14 and 70 years of age, going about the country idle, and not following any lawful mode of winning their bread. The list of the different descriptions of such persons given in the act, (see infra, 161,) contains almost exactly the characters which, in the present day continue, to a certain extent, still to infest the country, excepting perhaps a class, whom it rather surprises us nowadays to find in such company, viz. 'vagabond schollers of the Universities of St. 'Andrews, Glasgow, and Abirdene, not licensed by the Rec-'tor and Dean of Facultie of the Universitie to aske almes.'[2]

[1] An 'ordour of punishment' extremely similar to this was provided for vagabonds in England, (by 14 Eliz. c. *b*; 1572,) entitled, like this, 'An act for the 'punishment of vagabonds, and for relief of the poor and impotent,' (repealed by 35 Eliz. c. 7, and 43 Eliz. c. 2.) It was in every respect very similar to this Scotch act, as will be seen by the following summary of its contents. 'A vaga-'bond above the age of 14 years shall be adjudged to be grievously whipped and 'burnt through the gristle of the right ear with a hot iron, of the compass of an 'inch, unless some credible person will take him into his service for a year; and 'if, being of the age of 18 years, he after so fall again into a roguish life, he shall 'suffer death as a felon, unless some credible person will take him into service 'for two years; and if he fall a third time into a roguish life, he shall be adjudg-'ed a felon. Who shall be adjudged vagabonds? The penalty for the relief of 'them—who may make passports and licenses, and to whom?—Assessments 'shall be made of the parishioners, for the relief of the poor of the same parish.'

[2] A similar class of beggars seem to have existed at a more early period in England. By 12 Rich. II. c. 7, 1388, (repealed 21 Jac. I. c. 28,) it was enacted, 'Qé les clercs des universities qi vout ensy mendinanz aient lettres, de tes-'moigne de lour chanceller sur meane le peyne.' In the list of vagabonds contained in the act 1579, Egyptians are mentioned for the first time. They are noticed in an English act of the year 1530. By 22 Henry VIII. c. 10, 'Con-

Besides the penalties to be inflicted on the vagabonds themselves, the act declares, that every person who 'gives money, 'harberie, or ludging, settis houses, or shewis ony relief' to them, shall be liable in a fine not exceeding 5 punds Scots to the poor of the parish.[1] After some further provisions, for allowing to persons shipwrecked licenses to proceed to their own homes, and for appointing searchers in each parish to take up vagabonds, the act thus proceeds:

6. 'And seeing charitie wald, that the pure, aged, and im-'potent persons, suld be as necessarilie provided as the vaga-'bondes and strang beggars repressed, and that the aged, im-'potent, and pure peopil, suld have ludgeing and abiding-'places throughout the realme to settle themselves intill;' it therefore directs the Magistrates in towns, and the Justices to be constitute by the King's commission in parishes to land-'ward, betwixt and the first day of January next to cum, to take 'inquisitioun of all aged, pure, impotent, and decayed per-'sons, borne within that parochin, or quilkes war dwelling, or 'had their maist common resorte, in the said parochin the last 'seven yeirs bypast, quilkes of necessitie mon live bee almes,' and thereon to see what those may be made 'content, of 'their awn consentis, to accept daylie, and live unbeggand,[2]

'erning outlandish people calling themselves Egyptians,' they are prohibited from coming into the realme, and ordained to depart, under the penalty of forfeiting their goods and chattels to the King. The 2d of Philip and Mary, c. 4, makes it felony for them to remain one month within the kingdom; and that without benefit of clergy, by 5 Eliz. c. 20. These people were still more severely dealt with in Scotland; for by the act 1609, c. 9, they were declared liable to be summarily put to death, on its being proved that they were Egyptians, though not charged with any particular offence.

[1] By 27 Hen. VIII. c. 25, (1535,) all persons are prohibited from making any common dole, or giving any money in alms, but to the common boxes and gatherings in every parish, upon pain to forfeit ten times so much as shall be given. (Expired.)

[2] The English statute, 22 Hen. VIII. c. 25, (1535,) directed 'that all go-'vernors of shires, cities, parishes, &c., shall find and keep every impotent and

'and to provide where their remaining sall be be themselves, 'or in hous with others, with advice of the parochiners, 'quhair the saidis pure peopil may be best ludged and 'abide.'[1] The act then goes on to establish an assessment for their support in the following terms: 'And thereupon, 'according to the number, to consider quhat their neidful 'sustentation will extend to everie oulk (week,) and then, be 'the gude discretions of the saidis provestes, baillies, and 'judges, in the paroches to landward, and sik as they sall call 'to them to that effect, to taxe and stent the haill inhabitants 'within the parochin according to the estimation of their sub-'stance, without exception of persons, to sic ouklie (weekly) 'charge and contribution, as sall be thocht expedient and suf-'ficient to susteine the saidis pure peopil.' This taxation is directed to be renewed every year, 'for the alteration that 'may be throw death, or be incres or diminution of men's 'gudes and substance;' and all persons are declared liable to imprisonment who either refuse to contribute to the relief of the poor, 'or discourage utheris from so charitabil a 'deid.'

The act farther provides, that if the 'aged and impotent 'persons, not being so diseased, lamed, and impotent, but 'that they may work in some manner of work,' shall, nevertheless, refuse to perform the work appointed to them by the overseer, they shall be punished as vagabonds. It also allows any of the lieges to take beggars' children into their service, and gives a right to their labour to the age of 24 in males, and 18 in females. It permits testimonials to be giv-

'aged person which was born, or dwelt three years, within the same limit, by 'way of voluntary and charitable alms, &c., so that none of them shall be com-'pelled to go openly a-begging.'

[1] By 43 Eliz. c. 2, (1601,) The overseers are directed to provide 'convenient 'houses of dwelling for the said impotent poor, and also to place inmates, or 'more families than one, in one cottage or house, which cottages and houses shall 'not at any time after be used or employed to or for any other habitation, but 'only for the impotent and poor of the said parish.'

en to such of the poor as may be judged proper, authorizing them to ask alms in their own parishes; and after declaring that vagabonds, while imprisoned, shall be maintained by the parishes in which they were apprehended,—'allowing to each 'person ane punde of ait-bread, and water to drink,' it concludes with a declaration, that should any doubts arise as to the meaning of the act, 'the interpretation, explanation, sup-'plement, and full execution thereof,' is committed to the King, with the advice of his Privy Council.[1]

7. The improvement in the moral habits of the people of Scotland, which has been since produced by the operation of institutions of nearly the same period with this statute, was long retarded by adverse circumstances; and we accordingly find, that the expectation entertained of the effects of this act were not realized. Its only result, indeed, seems to have been, to create a feeling of the necessity for an increase of prisons and places of confinement to contain the vagabonds against whom the order of punishment contained in the act was directed. The next statute relating to the poor appoints prisons to be erected, not only at the head burghs, but also at all the principal towns and par-

1592, c. 149.

1 There were several English statutes prior to the 43d Eliz. c. 2, (the basis of the poor laws in England,) extremely analogous to this act, (1579, c. 74,) on which the Scottish system is founded; but the 43d of Elizabeth introduces a principle of providing work for all unemployed persons, which has rendered its tendency quite opposite to that of the Scottish act. The purport of the English statute is expressed generally in the first clause, which empowers 'church-'wardens and overseers of every parish, (with the consent of two or more Justices 'of the Peace,) to take order for setting to work the children of all such, whose 'parents shall not be thought able to keep and maintain them; and also, for 'setting to work all such persons, married or unmarried, having no means to 'maintain them, and use no ordinary and daily mode of life to get their living 'by; and also, to raise weekly, or otherwise, (by taxation of every inhabitant, '&c.) a sufficient stock of flax, hemp, wool, &c. to set the poor on work, and 'also competent sums of money for, and towards the necessary relief of the lame, 'impotent, old, and blind, and such others among them being poor and not able 'to work.'

ish churches; it grants power to certain persons, to be appointed by the Sheriff in each parish, to hold courts, and summon an assize for the trial and punishment of vagrants; and, in the event of their remissness, it authorizes the infliction of pecuniary penalties, and extends to persons to be appointed by the Kirk Sessions, the power of carrying into execution the provisions of the act 1579; which power the next statute, 1597, c. 272, transfers entirely to these bodies themselves, an alteration in the management of the poor laws, which has been attended with most beneficial effects. 1597, c. 272.

By the same statute, the time during which the lieges might compel the service of beggars' children, was extended to their whole lifetime; and in it there is the first mention made of a plan, subsequently attempted to be carried into effect, but fortunately without success, of employing beggars in common works.

8. The Kirk Sessions found, as their predecessors had done, that it was impossible to attain the end proposed, while the people continued in the same state of moral degradation; and the next act, (1600, c. 19,) complains, that the statute 1579 has received 'little or no effect or execution,' and declares, 'that the strong and idle beggars being for the most part thieves, bairds, and counterfitte limmers, living most insolently and ungodly, without marriage, or baptism of a great number of their children, are suffered to vaig and wander throughout all the haill country, and the poore and impotent persons are neglected, and no care had, and no provision made, for their enterteinment and sustentation;' and, attributing to the neglect of the persons to whom the execution of the Acts of Parliament had been committed, what was truly the consequence of the state of the country, and the moral condition of the people, it provides as a remedy, that the presbyteries shall take cognisance of the Kirk Sessions, and report to the King's ministers such 1600, c. 19.

as shall be negligent in the charge committed to them, that his Majesty may proceed against them accordingly. Notwithstanding this, and the additional assistance of the Justices of Peace, who, by 1617, c. 8, art. vii., are instructed to put the Acts of Parliament into due and full execution against vagabonds, and to punish and fine their 'receptors and setters of houses to them,' the very next statute, 1617, c. 10, sets out with narrating, that 'the number of the saids beggars hath daily increased more and more,'—and that the evil arose from not educating the children of poor parents in habits of industry, with a view to effect which, it models into a more complete form the system of temporary slavery introduced by the preceding acts.

1617, c. 8.

1617, c. 10.

9. A longer period than usual now elapses without any additional enactment relative to the poor. It is not till the year 1661, in the reign of Charles II. that they seem again to have occupied the attention of our legislature. By a statute passed in that year, containing commission and instructions to the Justices of the Peace, a power is given to these Magistrates,—which they have long ceased to exercise, (if indeed they ever did so,)—to make up lists of the poor in each parish twice in the year—to appoint overseers—to receive and distribute the collections and other funds for their maintenance—and, generally, to have the whole management of the poor.

1661, c. 38.

Although the system of management, by means of the Justices of Peace, directed by this act, has fallen into disuse, the act itself is very important, as pointing out, more clearly than perhaps any other, the understanding of the legislature as to the class of persons, who, under the statute 1579, were entitled to parochial relief. These were stated to be all 'poor, 'sick, aged, lame, and impotent persons, who (of themselves) 'have not to maintain them, nor are able to work for their 'living, as also all orphans and other poor children, who are

'left destitute of all help;' and it is ordered, that, into the list of the poor, 'no persons be received who are any way able 'to gain their own living.' These provisions were intended only for the benefit of the regular poor. The act c. 42, of the same year, had for its object the employment of vagabonds—an object which it combined with a plan for the encouragement of manufactures in the kingdom, by the institution of those Joint Stock Companies, which have become so universally prevalent in the present day. It also embraces a third class of poor, viz. idle or unemployed persons, who, though perhaps willing to work, were masterless and out of service. These, though not amenable to the severe penalties against vagabonds, were, nevertheless, by the statutes of this reign, subjected along with them to the same harsh regulations which were considered necessary to induce the proprietors of manufactories to afford them employment. 1661, c. 42.

This act proceeds on the narrative, 'that our Soveraine 'Lord, considering that all the laudable acts made be His 'Majestie's ancestors, &c. anent manufactories, for inriching 'His Majestie's ancient kingdom, putting of poor children, 'idle persons, and vagabonds, to work, have been hitherto 'rendered ineffectual; and that many good spirits having 'aimed at the public good, have, for want of sufficient stocks, 'counsel, and assistance, been crushed by such undertakings; 'do conceive it necessary to creat and erect companies and 'societies for manufactories, that what was above the capa-'city of single persons may be carried on by the joint assist-'ance, counsel, and means of many.' Privileges and immunities are accordingly conferred on those persons who should form societies for the introduction of manufactures, and the heritors of parishes are directed to appoint fit persons for the instruction of poor children, vagabonds, and idle persons, in the different kinds of work which might be required in these establishments.

10. Having thus, as the legislature conceived, provided for the immediate erection of manufactories all over the kingdom, and for rendering the vagabonds, &c. fit to be employed in them, the next step was to grant power to the manufacturing societies to compel their services, and to afford these bodies a sufficient inducement to do so. This was the object of the act 1663, c. 16, which sets forth by declaring, 'that His Majestie, considering that the chief 'cause whereby the foresaid acts have proven ineffectual, and 'that vagabonds and idle persons do yet so much abound, hath 'been, that there were few or no common works then erected 'in the kingdom, who might take and employ the said idle 'persons in their service; and that now, by His Majestie's 'princely care, common works, for manufactories of diverse 'sorts, are setting up in this kingdom.' Power is therefore given to persons or societies having manufactories, to seize all vagabonds and idle persons, and employ them as they shall see fit, 'the same being done with the advice of the re-'spective magistrates of the place where they shall be seized 'upon.' And to induce the societies and manufacturers to employ these persons, it was enacted, that they should have right to their service for eleven years without paying them any wages—giving them meat and clothes only; and besides this, that they should receive from the parish of the persons so employed by them, two shillings Scots per day, for each person, during the first year after his apprehension, and one shilling per day for the next three years, when the allowance to be paid by the parish was to cease. This money was directed to be raised by assessment, to be laid on the parish by the heritors, who were themselves to pay one half; the other half being leviable from the 'tenants and possessors,' with power to the persons or societies employing the poor, in the event of the heritors failing to tax themselves, to charge them by letters of horning for payment of these allowances. By some inadvertency, this act has by many been supposed to

1663, c. 16.

relate to the case of the regular poor entitled under the former statutes to parochial relief, and has been considered to be the authority for levying assessments for their support; while, in fact, it has referrence only to the case of vagabonds and idle persons employed by manufacturers in their works, and the assessment here authorized is solely for raising the allowances payable to these manufacturers, and afterwards transferred to the correction-houses.[1] It is true, that the plan of dividing the assessment into two parts, the one to be levied from the heritors, and the other from the householders, was subsequently adopted, in reference to the assessment for the support of the ordinary poor in landward parishes, instead of the mode directed by the act 1579, of levying it from the whole inhabitants in one class; and that the period of three years, as fixing the settlement of a pauper, instead of seven, has also been borrowed from this act; but, except in these particulars, adopted in subsequent enactments, this statute may be considered as in total desuetude: indeed M'Kenzie expressly observes, that it never was carried into execution.[2] The summary mode of seizing on vagabonds, and unemployed persons, and of compelling their gratuitous service for a term of years, could never be tolerated in the present day; and the manufacturers were deprived of all right to the parochial allowances, by the act which we come next to consider.

11. This act, like all which had preceded it, complains of the inefficacy of former enactments, and professes to have at last found out the true remedy 1672, c. 18.

[1] I am happy now to have it in my power to adduce in support of the view I have taken of this statute, the high authority of Lord President Hope, who, in a case which has occurred since the first edition was published, (Buchanan *v.* Parkes, February 21, 1827—5 Shaw and Dunlop, 230,) observed as follows: 'The next act regarding the 'poor is 1663, c. 16, which I mention, because it appears to me to be greatly misunder-'stood and misapplied. It is not applicable to the poor in general at all; it ordains 'all vagrant and idle poor, &c. to be apprehended by those authorized, and forced to 'work by all kinds of punishment, life and torture excepted: and for the encourage-'ment of persons giving work to such, they are to be allowed so much a-day; not for 'the poor in general, but for the poor "so employed;" and it is only for this purpose 'that an assessment is authorized by that act.'

[2] Observations, Charles II. Parl. I. sess. 3. act 16.

for the evil, which is no other than the adoption of the system of correction-houses, in which the vagabonds and idle persons might be compelled to work. For carrying this plan into effect, the statute ordained the magistrates of all the burghs mentioned in the act, to build sufficient correction-houses, within a certain period, 'for receiving and entertaining of the beggars, vagabonds, and idle persons within their burghs, and such as shall be sent to them,' from bounds allotted to each burgh; and with the intention of compelling obedience on the part of the magistrates of burghs, it was provided that, in case they failed to have the correction-houses ready at the specified time, they should incur the penalty of five hundred merks quarterly until the houses were built, leviable by the Commissioners of Excise, to be by them appropriated to the building or buying of such houses. To enable the burghs to maintain the vagabonds, &c. who should be sent to their correction-houses, the allowances granted by the preceding act, (1663, c. 16,) to the societies and manufacturers employing the poor, were transferred to the burghs for the use of the correction-houses, the masters of which were vested with the same power as these societies had possessed, of compelling, for the period of eleven years, the gratuitous labour of all persons sent to the correction-house, and with the same authority, to enforce discipline and order, by keeping them constantly within the walls of the building, and using 'all manner of severity and coercion, by whipping or 'otherways, excepting torture.'[1] Notwithstanding the severe penalties to which the burghs were subjected, in the event of non-compliance with the provisions of this statute, they appear to have evaded performance so completely, that there does not exist in Scotland a single correction-house, applied

[1] By 7 James I. c. 4, it was enacted, that there should be provided, in every county in England and Wales, 'one or more fit and convenient house, or houses of correction, with mills, cards, turns, and such like necessary implements, to set the said 'rogues, or such other idle persons, on work;' with power to the governor 'to punish the said rogues, idle and disorderly persons, by putting fetters and gyves on them, 'and by moderate whipping of them.'

to the purposes set forth in the act. To whatever cause this may be attributed, it is a most fortunate result for the country, which has thereby escaped from an intolerable burden that could only have tended to increase the evil it was meant to remedy. The correction-houses not having been built, the allowances, of course, were never levied, and so far the statute has fallen into general disuse; and it would seem, that no attempt could now be made to carry it into execution.

12. One part of the act, however, has reference to the impotent poor, and, so far as it relates to them, its provisions are still in observance.

In order to ascertain who were to be sent to the correction-houses, and who were to be maintained by parochial contributions, the act directs the kirk-session, along with the heritors, who are here for the first time intrusted with a voice in the management, to make up lists of the poor, and inquire 'if 'they be able, or unable, to work, by reason of age, infirmity, 'or disease;' 'and to condescend upon such as, through age 'and infirmity, are not able to work, and appoint them places 'where to abide, that they may be supplied by the contribu-'tions at the parish kirkes;' and as to all such that 'are of 'age and capacity to work,' to send them to the correction-houses, provided none of the inhabitants will accept of them, in terms of the act 1617, c. 10.

It would seem from this act that the practice of levying assessments for the support of the impotent poor, authorized by 1579, c. 74, had not been brought into general use, as it is declared, that if the contributions at the parish churches were not sufficient to maintain them, they should be furnished with a badge or ticket to ask alms within their own parishes, thus substituting the old privilege of begging for that of support by means of assessment.

13. The three latest statutes relative to the poor, viz. the acts 1695, c. 43, 1696, c. 29, and 1698, c. 21, merely contain directions for carrying the former acts

1695, c. 43.

1696, c. 29, 1698, c. 21. (which are thereby ratified) into more rigorous execution, grant power for that purpose to the Privy Council, and ratify their proclamations.

14. These proclamations of the Privy Council, which complete our statutory law on this subject, were issued in consequence of the distress occasioned by a succession of bad harvests for several years, thence called the 'seven ill years;' and although certainly forming part of our law relative to the poor, they cannot be considered as having superseded or repealed the prior acts of Parliament, the provisions of which they were avowedly intended to enforce.[1]

[1] It has lately been stated from high authority, (Lord Corehouse, in Buchanan *v.* Parker, February 21, 1827, F.C. and 5. Shaw and Dunlop, 230,) that our Poor Laws rest entirely on the proclamations of the Privy-Council alone, and that these proclamations have superseded the several acts of Parliament relative to this matter. As, however, the judgment of the Court, in the case of Buchanan and Parker, where this observation was made, contained no finding to this effect, and did not necessarily proceed on that opinion, and as the Judges who concurred with Lord Corehouse in the general result at which he arrived, did not state that they likewise concurred in his Lordship's view of this particular point, I do not think myself yet warranted to adopt a doctrine which I conceive to be opposed by almost all preceding authorities, and which would sweep away entirely the foundation of a great part of what I have ventured, in the course of this Treatise, to state as the law of Scotland relative to the poor; but as great doubt must necessarily be entertained of the correctness of the doctrine laid down in the text, in consequence of the opinion expressed by so eminent a lawyer and judge, without *dissent* at least on the part of the majority of the whole Court, I think it right to state the grounds on which I retain it as there stated. These are as follows:—

1. When the proclamations of the Privy Council were issued, they were (with the exception, perhaps, of the last, which is of little importance) unsanctioned by the authority of Parliament, and depended entirely, for effect, on the powers of the Privy-Council. In construing them, therefore, it seems impossible to hold that they could have been intended, when issued, to supersede or repeal previous acts of the legislature.

2. The proclamations expressly bear, that their object was to enforce the existing laws. Thus, the first proclamation (11th August, 1692), sets forth, "Where- "as several good laws have been made by our royal predecessors, for maintaining "the poor, and relieving the lieges of the burden of vagabonds; *in prosecution* "*whereof*, we hereby require," &c. The second (29th August, 1693) is merely to supply an omission in the first; and that of 31st July, 1694, proceeds on this narrative: "Forasmuch as many good laws have been made by our royal pre- "decessors for maintaining the poor, and relieving the lieges from vagabonds: "*in prosecution whereof*, several proclamations have been emitted by our Privy "Council, *for the better putting the said laws in execution*; notwithstandin

The first proclamation directs the heritors and kirk-sessions of landward parishes to assess themselves for the support of the poor, introducing a

Aug. 11. 1692.

"whereof, due obedience hath not hitherto been given to the same, so that the "poor are not duly provided for, nor the vagabonds restrained in many places: "Therefore," it proceeds, "we hereby require and command the ministers, he-"ritors, and elders, of every parish, and householders and inhabitants within the "same *respective*, to follow forth, and give ready obedience *to the acts of* "*Parliament* and proclamations of our Privy Council, already made: And "further, we, with the advice foresaid, require and command the Sheriffs of the "several shires, and their Deputies, Justices of the Peace, and Magistrates of "the Royal Burghs of this kingdom, within their several jurisdictions, to take "trial how far, and in what manner, *the said acts of Parliament* and proclama-"tions of Council have been obeyed and put to execution conform to the tenors "thereof; and where any have been neglected, or been deficient and wanting in "what is required of them by the said *acts* and proclamations, to amerciate and "fine them therefore in the manner specified."

3. The acts of Parliament 1695, c. 43, 1696, c. 29, and 1698, c. 21, (which last statute alone gives the authority of permanent laws to the proclamations of the Privy Council), while they ratify these proclamations, do, at the same time, expressly "ratify, renew, approve, and revive" the several acts of Parliament relative to the poor, and, in particular, the act 1579, c. 74. And although the statute 1698, c. 21, gives power to the Privy Council to make such acts and constitutions as should be thought necessary, it contains the qualification, that they be "not inconsistent with the standing laws."

4. Where the proclamations and the acts of Parliament are directly at variance, the practice of the country and our courts have hitherto followed the provisions of the latter, and disregarded the former, as, for instance, in regard to residence being taken as the criterion for determining a pauper's settlement in preference to the *birth*, and *three* years' residence instead of *seven*, contrary in both cases to the express terms of the proclamations 11th August, 1692, and 29th August, 1693. See in particular, as to this, the case of the Overseers of Dunse *v.* Parish of Edrom, June 15, 1745, (M. 10553), where Kilkerran, who reports the case, states the grounds of the decision of the Court as follows:—"But as the acts "1698 and 1695 ratified the foresaid act of Charles II. (1672, c. 18,) as well as "the said proclamation 1693, *which therefore could not be thought to have been* "*intended by the legislature to be ratified further than was consistent with the* "*statute*; as neither, indeed, could it be supposed that the Privy Council meant "by their proclamation to repeal an act of Parliament, notwithstanding the loose "terms of the proclamation, and general terms of the act of Parliament ratifying "it, the Lords found," &c.

5. In all the cases which have occurred relative to the poor prior to that of Buchanan *v.* Parker, the parties have uniformly argued their causes, and the judges have decided them, on the assumption that the acts of Parliament were not superseded by the proclamations of the Privy Council, but formed the foun-

distinction between heritors and the rest of the inhabitants or householders, (as the proclamation styles them,) in the imposition of the assessment, which is divided into two halves, the one to be laid on the former, and the other on the latter. It directs the heritors to put the poor to work; makes provision for the transmission of beggars to their own parishes; imposes fines on persons giving alms to beggars beyond their parish, or refusing to pay their quota to the support of the regular poor; and, finally, ordains correction-houses to be immediately built by the greater burghs, to serve until the lesser burghs be able to erect theirs.[1]

Aug. 29, 1693. 15. The second proclamation renews the directions as to beggars repairing to their own parishes, under pain of being imprisoned as vagabonds, and fed on bread and water for a month; appoints the magistrates in burghs and the heritors in vacant parishes to lay on assessments for the support of the poor; and ordains the kirk-session to give one-half of the collections for the same purpose.

July 31, 1694. 16. By the third, power is given to the Sheriffs, Justices of Peace, and Magistrates of burghs, to impose fines on all persons not obeying and carrying into execution the several acts and proclamations re-

d tion of our Poor Laws; and so lately, as in the case of Cochrane *v.* Manson, February 11, 1823, (2. Shaw and Dunlop, 183,) it is stated, that the Court "were unanimously of opinion that the act 1579, c. 74, was not in desuetude."

6. The only two of our institutional writers who advert to the subject of our Poor Laws, while they refer to the leading acts of Parliament, do not even allude to the existence of the proclamations of the Privy Council. 1. Erskine, 7. 63. 1. Bankton, 2. 60.

Having ventured humbly to state the above as the principal reasons which prevent me from adopting the opinion of Lord Corehouse, I think it important also to add, that his Lordship delivered that opinion without the benefit of previous discussion from the bar,—his Lordship's views being so entirely new to the profession, that they had not been stated, or even alluded to by any of the able and learned Counsel engaged in the cause.

[1] The proclamations will be found in the Appendix, Nos. III. IV. V. and VI.

lative to the poor; and a committee of he Privy Council is appointed to take cognizance of the diligence of the Sheriffs.

17. The last of these proclamations, besides giving a general power to the heritors and kirk-sessions to determine all questions 'in relation to 'the ordering and disposing of the poor,' makes an expiring effort to compel the burghs to build correction-houses, by imposing on them, besides the pecuniary penalties inflicted by former acts and proclamations, the burden of maintaining all the poor who might be sent to them, until such houses should be erected.

Mar. 3, 1698.

18. These proclamations complete the enactments relative to the poor, the provisions of which may be divided into two distinct classes; the one having reference to the support of the aged and impotent poor; the other relating to the employment of vagabonds and idle persons. The former confer a right on the poor, for whose behoof they were made; the latter impose a punishment on those for whose suppression they were intended. The latter class have, happily, never been carried into execution, and probably could not now be enforced. Indeed, except as to some lesser penalties against vagabonds which have been kept up in practice, these statutes may be considered as in total desuetude.[1] The system for support of the impotent poor, established by the other class of statutes, as it now exists in practice, may be considered to be as nearly perfect as any system of legal provision can be. As it professes not to maintain, or to provide

[1] The circumstance of these statutes having fallen into desuetude may have been partly owing to the poverty of the burghs in Scotland, which prevented the establishment of correction-houses; but it must be chiefly attributed to the excellent adaptation of the ecclesiastical establishment of Scotland, and the system of parochial schools, to effect the moral and intellectual improvement of the people. The absence of moral and intellectual cultivation, as it confines the wants and desires of a people to the indulgence of their animal appetites, which, in consequence, they gratify without the check of any moral restraint, necessarily produces pauperism and wretchedness, by its tendency to increase the population of a country beyond the means of supply. On the other hand, an improved moral condition, resulting from religious and intellectual cultivation, by inspiring man with nobler desires and higher objects

employment for, persons able to work, or who have relatives from whom they can demand support, it does not tend to encourage idleness, to interfere with the profits of the industrious labourer, or to loosen the bonds of natural affection;—as the power of levying assessments and of granting relief is vested, in the first instance, in those who are chiefly liable in the support of the poor, there is little danger of extravagance in the administration of the funds; and as the management and 'ordering' of the poor is generally intrusted to the elders, who act gratuitously, little expense is incurred besides the sums actually employed in affording relief; while at the same time a sure resource is provided for the helpless poor 'who 'shall never cease out of the land,' should voluntary charity fail; and a constant intercourse is produced between the poor and those of a rank superior to themselves, which alone would render any system a blessing to the society in which it exists.

of ambition, raises him in the scale of humanity, and enables him to restrain the grosser propensities of his nature within those bounds which he sees to be necessary for the comfort, happiness, and respectability of himself and his family. Accordingly, in Scotland, pauperism decreased exactly in proportion as the inhabitants advanced in moral improvement; and it has again augmented of late years, as the means of educating the lower orders of society have become inadequate, owing to the great increase of the population, especially in manufacturing towns. It is on the same principle, that the deficiency of institutions for effectually educating the lower classes in England has been the true cause of the alarming extent of pauperism in that country, and of calling into such fearfully active operation, provisions of the legislature similar to those which have fallen into total desuetude in Scotland, the effect of which again is to accelerate the moral degradation of the people and the increase of pauperism. And it is owing to the absence of effectual means of properly instructing the people, that Ireland has become almost a nation of paupers.

CHAPTER II.

OF PERSONS ENTITLED TO RELIEF.

19. THERE are three classes of poor acknowledged in our law, each of which has been the object of legislative enactment.

1. Those who are entitled to parochial relief.

2. Vagabonds and strong beggars, 'being personnes abill 'in bodie, living idle, and fleeing labour;'[1] and,

3. Unemployed persons, 'who, being masterless and out 'of service, have not wherewith to maintain themselves by 'their own means and work.'[2]

The first class will form the subject of the present, the two last of subsequent chapters. See infra, chap. 6 and 7.

20. Under the descriptions in the different Acts of Parliament of those persons who are entitled to parochial relief, (supra, 6, 9, 12,) are included generally all poor persons, (possessed of a settlement in Scotland, to be afterwards considered,) who, by reason of the infirmity of age, or immaturity of years,—by reason of physical disability and weakness of body,—or by reason of mental imbecility or disease, are incapable of earning subsistence by labour. Thus are entitled to relief,

21. (1.) Poor persons, of seventy years or upwards,[3] or under that age, if so infirm as to be unable to gain a livelihood by their work.[4]

22. (2.) Orphans and destitute children under fourteen

[1] 1579, c. 74.
[2] 1663, c. 16.
[3] 1424, c. 25 and 42.—1579, c. 74.
[4] 1661, c. 38.—1672, c. 18.

years of age, and those illegitimate, as well as lawful.[1] But children living with parents who are not proper objects of relief, have no claim to be supported independent of them. As to the case of children born in Scotland of parents having no settlement, and of children exposed whose parents and place of birth are unknown,—see infra, 64, 87-9.

23. (3.) All who, from permanent bodily disease and debility, are unable to work, are proper objects of parochial relief, as 'cruiked folk, impotent folk, and weak folk.'[2] It is not necessary, to entitle such persons to relief, that they should be totally incapable of performing any work whatever; it is sufficient, that they be unable to work so as to gain a livelihood, and that they 'must of necessity be sustained 'by almes.'[3] If such persons, however, refuse to work in so far as they are able, or if they persist in the practice of common begging, without allowance of the heritors and kirk sessions, or beyond the bounds of the parish, they can have no claim for parochial support, but are liable to be treated as vagabonds, while they so conduct themselves.[4]

No person is entitled to permanent relief who is able to work so as to gain a livelihood.[5] As to whether they are entitled to temporary relief,—see infra, 28.

24. Under this class of persons who are physically disabled from obtaining a livelihood by their work, have been generally included destitute widows with families of children, as being disabled by the natural weakness of their frame from supporting a family by their labour. These, however, may perhaps be more justly considered as only entitled to receive the aliment for behoof of their children, who are proper objects of parochial relief, if the parent be unable to work for their support.

[1] 1424, c. 25 and 42.—1579, c. 74.—1661, c. 38.—1672, c. 18.
[2] 1503, c. 70.—1579, c. 74.—1661, c. 38.—1672, c. 18.
[3] Ibid.
[4] 1579, c. 74.—1661, c. 38.
[5] 1579, c. 74.—1661, c. 38.—1672 c. 18.; 1 Bank. 2, 60; 1. Erak. 7, 63. M'Cowan, May 20, 1809, (F. C.)

It may well be doubted, how far a woman of ordinary strength should, in general, be considered entitled to relief, on account of being burdened with one or two children; assuredly, if the situation of the parish be such as to give her a reasonable prospect of supporting herself and children by her own exertions, the heritors and kirk session are entitled to exercise their discretion in refusing relief, either partially or totally, as the circumstance of the case may seem to warrant.'[1]

It has become customary for mothers of bastard children to demand not only aliment from the birth of the child, although the application for relief has not been made for some time afterwards, but in-lying expenses also. There seems to be no authority in any of the Acts of Parliament for either of these demands; and in one case it was expressly found, even in reference to a legitimate child, that aliment was due only from the date of the application for relief; that advances by relations prior to that period must be held to have been made *ex pietate*, and that for these they had no claim to be reimbursed.[2] But lately, the First Division of the Court found a parish liable from the birth of the child, although there was no proof of any application for relief having been made until two years thereafter; and even although the relations of the mother, who had assisted her in supporting the child, were not claiming reimbursement, and were not parties to the process.[3] In a former case, too, the same Division of the Court admitted the mother's claim for in-lying expenses.[4]

25. (4.) Idiots, and persons insane, are also entitled to be supported. But it has been determined, that where a lunatic person has been tried as a criminal before the Court of Jus-

[1] Robert, Feb. 5, 1825. (3. Shaw and Dunlop, 348.) The Court refused to interfere with the amount granted by the kirk session, (5s. per month,) and found that the parish was not bound to award an aliment for any definite period, as till the child attained a certain age.

[2] Howie, January 25, 1800. (Mor. Ap. Poor, 1.)

[3] Robert, ut supra.

[4] Murray v. Craick, 1817. (Not rep.)

ticiary, and found to have committed the crime charged, but while in a state of insanity, and is confined, by order of the Court, neither the parish of his settlement, nor that where the crime was committed, are bound to aliment him during his confinement.[1] In such a case, the burden must be borne by the Crown.[2] The same rule, however, does not apply where he has been confined by an inferior Magistrate, merely as a matter of precaution, no crime being charged against him.[3]

26. Foreigners, who have acquired a settlement in this country, and who are otherwise proper objects of parochial relief under any of the above classes, are equally entitled to demand support from the parish of their settlement with natural-born Scotchmen.[4]

27. It seems very doubtful, whether persons, who in general are able to support themselves, are entitled to relief during periods of temporary sickness, or bodily injury.

By the proclamation of the Privy Council, 29th August, 1693, it is declared, that the kirk sessions shall deliver over to the heritors one half of the collections at the church doors, for the support of the regular poor; and it is supposed by some, that it was intended that the other half should be appropriated to the relief of those temporary objects of charity who are not entitled to a place on the permanent roll. The proclamation, however, gives no direct authority to such a construction; and although it may possibly have been intended to enable the kirk session to follow this practice, it certainly does not render it imperative on them, or confer any right to relief on such objects of charity. And, at all events, unless such persons are entitled to relief under the statutes authorizing assessments, no other funds except this half of the

1 Commissioners of Supply of Wigtonshire, Feb. 21, 1823. (2. Shaw and Dunlop, 210.)
2 Commissioners of Supply of Wigtonshire, June 5, 1827. (5. S. and D. 359.)
3 Scott, Nov. 13, 1818, (F. C.)
4 Higgins, July 9, 1824. (3. S. and D. 183.)

collections can be appropriated to their aid; as an additional assessment would thereby be required for purposes not authorized by the Acts of Parliament; and it would be contrary to all sound principle to extend a tax on the subject, which an assessment truly is, beyond the bounds for which it was granted by the legislature. There is, doubtless, in one of the Acts of Parliament relative to the poor, an expression which perhaps may seem to countenance the doctrine, that persons are entitled to relief during merely temporary sickness or disability to work. This occurs in the statute, 1661, c. 38, where 'sick' persons are mentioned among the poor entitled to parochial relief; but, from the whole scope of the passage, it would rather seem, that the legislature only meant those who, by reason of permanent ailment, were incapacitated from following any trade or train of employment, whereby they might gain a livelihood. The act directs examination to be made 'of all poor, aged, *sick*, lame, and impotent inhabitants, &c. who (of themselves) have not to maintain them, nor are able to work for their living;'—'and to enrol all such persons, and to provide them a convenient house for their dwelling, either apart or together, as they shall judge requisite.' Now the expression,—persons 'not able to work for their living,'—applies to those who are disabled from making a livelihood, rather than to those whose employment is merely temporarily suspended; and if the latter class of persons were meant, they would not probably have been directed to be placed in poor's-houses along with the permanently disabled.

The general tenor of our statutes, therefore, applies solely to those who are permanently disabled; and although, in many parishes, it has been the practice to afford relief to persons labouring under temporary sickness, there seems to be no authority for considering this to be imperative on them.

28. It is a still more important question, whether able-bodied men, who in general support themselves by their la-

bour, are entitled to parochial relief when reduced to temporary want, in consequence of a season of dearth, stagnation of trade, or the like calamity.

On the one hand, it is contended, that the object of the legislature was to provide for those only who are incapable of making a livelihood, persons who must necessarily be a permanent burden on the country; and, if not supported by the parish, must make begging their trade,—their constant means of subsistence; and that this was truly the object of the legislature, appears, it is said, from an examination of the several statutes.

By the earlier enactments,[1] the impotent poor are allowed to have a licence to beg. This privilege was subsequently commuted for the right to parochial support; a right, however, which was extended to those only who had already the privilege of begging. Thus, the act 1579, c. 74, which instituted the system of parochial relief, directs the Justices charged with the execution of it, to see what those who 'necessairlie mon be susteined be almes may be maid content, of 'their awn consents, to accept daylie to live unbeggand, and 'to provide quhair their remaining sall be be themselves, or 'in house with others, with advise of the parochiners, quhair 'the saidis pure people may be best ludged and abyde;' and it is for these persons alone that an assessment is authorized by that act. These were evidently persons who had the privilege of begging, and who were to have the option of accepting the new provision, or of exercising their former right of begging, for which it had been substituted; and as they were directed to be lodged in poor's-houses, it is clear that none could be in the view of the legislature but those who were to remain a burden on the parish all their days. Now, on referring to the statutes granting the right to beg,[2] it appears that it was confined to persons under 14, and above 70 years of age, and to 'cruiked folk, seik folk, impotent folk, and weak

[1] 1424, c. 42; 1503, c. 70. [2] Ibid.

'folk.' There is no indication of an intention to admit able-bodied persons, of any description, to exercise the privilege of begging. Nor does the act 1579, which commuted this right, and established the present mode of parochial relief, give any countenance to the doctrine, that such persons were, in virtue of it, to be entitled, in any case, to support. Accordingly, the purport of the act is stated in the preamble to be, 'that 'the pure, aged, and impotent persons should be als neces-'sarlie provided for, as the vagabounds and strang beggars 'repressed; and that the aged, impotent, and pure peopil 'suld have ludging and abiding places throughout the realme, 'to settle themselves intil;' clearly shewing, that the persons whose relief it had in view were those who were permanently to settle themselves at the expense of the parish. The provisions of the act accord with this object; they mention, as entitled to relief, only the 'aged, pure, impotent, and decayed 'persones, quilkes of necessity mon live bee almes;' a phrase which implies that they must of necessity gain their constant livelihood by alms.

29. In the same terms is mention made, in the subsequent statutes, of those who are entitled to parochial support—Thus, by 1661, c. 38, those who are to be admitted to the roll of poor are the 'poor, aged, sick, lame, and impotent in-'habitants, who (of themselves) have not to maintain them, 'nor are able to work for their living;' and it is declared that no persons shall be received on the list 'who are in any way 'able to gain their own living,' which can never be affirmed of persons labouring under distress from temporary circumstances, but who are still 'able to work for their living.' In the same way, the act 1672, c. 18, in laying down rules for determining 'who are to be keeped and entertained by the 'contributions at the paroch kirks for the poor,' directs 'in-'quisition to be made if they be able or unable to work, by 'reason of age, infirmity or disease;' and those who, 'through 'age and infirmity, are not able to work,' are appointed to be

lodged 'in places wherein to abide, that they may be sup-'plied by the contributions at the parish kirk;' or if these should not be sufficient, by permission to beg within their own parishes. By a prior statute, (1661, c. 16,) all vagabonds and idle persons 'being masterless and out of service,' and 'who have not wherewith to maintain themselves by 'their own means and work,' were declared liable to be seized and employed gratuitously for a term of years by the manufacturing societies; and by this act, (1672, c. 18,) all poor who were of age and capacity to work, including of course the unemployed persons mentioned by the statute 1661, were to be offered to the inhabitants as servants; and if not received by them, to be sent to the correction-houses, then appointed to be erected. The able-bodied poor being thus included among those liable to be sent to the correction-houses, cannot also be ranked among the opposite class entitled to relief.

The whole tenor of these statutes, therefore, it is contended, clearly points out, that those persons only are intended to be maintained, who are permanently disabled from earning a livelihood, while there is not a single expression in them which can authorize a claim for support on the part of those who, being perfectly able to work, are, from accidental circumstances, thrown out of employment for a season. And this view is further confirmed by the opinions of our institutional writers.[1] Nor can the proclamation, 11th August, 1692, it may justly be said, alter the case, for although it directs lists to be made up 'of all the poor,' and assessments to be levied for their behoof, yet the proclamations of the Privy Council have always been construed in accordance with the existing laws; and it can only be held to mean those poor who were entitled to parochial support under the prior statutes.[2]

30. On the other hand, it is argued, that the only just criterion for determining who ought to receive parochial relief,

[1] 1 Bankt. 2, 60; 1 Ersk. 7, 63.

[2] See, however, Supra 14. Note.

is disability to obtain subsistence; and that it matters not whether that disability be temporary or permanent, whether it arise from infirmity, or from any other cause, if it be beyond the control of the unfortunate persons who are rendered by it incapable of earning their daily bread; and this doctrine was adopted in a case tried for the purpose of determining the question, where the Court sustained an assessment for the relief of a number of able-bodied labourers, who, in ordinary times, supported themselves, but were reduced to want by the failure of two successive crops in the beginning of the present century.[1]

That case, however, arose, it ought to be observed, not from an attempt on the part of the poor themselves to compel the parish to aliment them, but from a refusal on the part of two individuals to pay the rate imposed on them by the unanimous determination of the heritors and kirk session; and although the Court might conceive it inexpedient to interfere with the resolution of the body to whom the legislature has committed the power of assessment, it does not necessarily follow, that they would sustain a claim, if advanced by the able-bodied poor themselves, in opposition to the resolution of that body. This decision also was contrary to the opinion of several able Judges,[2] and its soundness has been much questioned. Moreover, since the period when it was pronounced, the inexpediency of the system sanctioned by it, has been more generally acknowledged; and the dread which was then entertained of persons in such circumstances incurring the danger of starvation, if not supported by compulsory provi-

[1] Pollock *v.* Darling, Jan. 17, 1804 (M. 10591.)

[2] The decision was carried by the majority of a single voice. The author is enabled, from a marking on the Session papers of the late Lord Methven, in the possession of his son, George Smythe, Esq. to subjoin a list of the Judges who voted on each side. The following supported the assessment:—Lords Craig, Woodhouselee, Methven, Meadowbank, Hermand, Ankerville, Polkemmet, and Balmuto. Those who held a contrary opinion were, Lord President Campbell, Lord Justice Clerk Rae, Lords Armadale, Glenlee, Bannatyne, Dunsinnan, and Cullen.

sion, has been completely removed, by the greater knowledge which has been acquired, as to the true causes and remedies of pauperism, and the more enlightened views which are universally entertained regarding them. Should a similar case now occur, it is probable, therefore, that the Court will return to the sounder principles of the Acts of Parliament, (sanctioned as they are by our institutional writers,) which profess only to remedy a permanent evil, and leave those who are suffering under merely temporary distress, to the care of that private and voluntary charity, which, in subsequent seasons of much greater privation and misery than those which give rise to the case above cited, has been found sufficient to supply the wants of thousands, who, for a considerable period, were dependent solely on the benevolence of their fellow-creatures.

As to whether such persons are entitled to insist on having work supplied to them by the parish, see infra, chap. 7.

31. To entitle any of the different classes of persons already enumerated to parochial relief, it is of course essential, that they be destitute of any funds of their own. Even where an individual is not in actual possession of property, if he have a vested interest which can be disposed of so as to realize any funds, he can have no claim for relief.[1] There are, however, cases when partial relief may be demanded, although the applicant have some means of his own—as where he is possessed of some pittance, but totally inadequate to his support, in the shape of annuity, from a private charitable association, from the collections at a dissenting meeting-house, or the like. Such annuities cannot be disposed of so as to realize any available property; and if they could, it would be equally imprudent and unjust to compel the pauper to part

[1] Maidment, May 25, 1815, (F. C.) as reversed in House of Lords, May 27, 1818, 16 Dow, 257.—This related to a claim of aliment against a mother, and *a fortiori* must apply to the case of a claim against a parish.

with them. Persons possessed of such inadequate provisions, are in an exactly similar condition to those, who, although unable to labour sufficiently for their complete support, are yet, 'not sa diseased, lamed, or impotent, bot that they may 'work in some manner of work.' They must, however, be persons so destitute, and so disabled from working, that they 'mon of necessitie be sustained by almes.'[1] As to army and navy pensioners, see infra 105.

32. If a pauper, though totally destitute himself, and otherwise a proper object of parochial relief, have relations in sufficient circumstances, of such near degree as to be bound to aliment him, the parish of his settlement has a claim of relief against them, to the effect both of recovering any sums they may have advanced for his support, and of having them declared liable to aliment him in future.[2] But it is a more difficult question, whether the claim for aliment possessed by the pauper, is to be considered as a sort of property, which he has it in his power to realize, so as to entitle the parish to refuse him relief. It doubtless seems harsh to refuse relief to a person who is not possessed of funds to prosecute a suit in a court of law, and who must be destitute of the means of subsistence, while the action against his relatives is in dependance. But in the case above quoted, the Court concurred in the opinion, that the parish was entitled to refuse to place a pauper in these circumstances on the roll, and thus to compel him to have recourse on those relatives who are bound in law to support him. All objections, however, to the doctrine sanctioned by the opinion of the Court in this case, would be entirely removed by the parish allowing an interim aliment, restricted to such period as might be judged sufficient to enable the pauper to prosecute his claims against his relations; and indeed the propriety of such an interim allowance seemed to be acknowledged by the Court in the case alluded to.

33. A father, whether in the lower or upper ranks of life,

[1] 1579, c. 74. [2] Ettrick, Feb. 14, 1824. (2 Shaw and Dunlop, 662.)

is bound to maintain his children, not only while in infancy, but so long as, from disease, idiocy, or the like cause, they are unable to work for their own support,[1] and that whether they be legitimate or illegitimate.[2]

34. If the father be dead, or otherways incapable of supporting his children, the burden falls upon the mother,[3] and then on the pauper's grandfather, and so upwards upon the other paternal ascendants.[4]

35. It has been determined in several cases, that a father is bound to support his son's wife, the son being unable to maintain her.[5] Where, however, the son is able to support his wife, although he be abroad, she has no claim on her father-in-law;[6] and the father was found to be relieved of this obligation in a late case, where he had originally provided for the son, and the wife, who had been accustomed, prior to the marriage, to earn her own livelihood, had refused to accompany her husband abroad.[7] In this case, however, it does not appear that the wife, although burdened with a daughter, was incapable of supporting herself by her own work. In such circumstances the decision might probably be different.

The father is not bound to support his son's widow.[8]

[1] 1 Stair, 5, 7; 1 Bank. 6, 13; 1 Ersk. 6, 56.

[2] Finlayson, July 7, 1609. (F. C.)

[3] 1 Bank. 6, 15. Children of Earl of Buchan, July 23, 1666. Erskine, however, ranks the mother as posterior to all paternal ascendants in the order of liability—as, however, she has in peculiar circumstances been held liable to relieve the father's heir to a certain extent, she would, on the same principle, be liable in a question with his ascendants.

[4] 1 Ersk. 6, 56. Tait, Feb. 28, 1802. (M. Ap. 3. Aliment.) Christie, July 6, 1802. (M. Ap. 5. Aliment.) In this case, it would appear from the report, that the father, though abroad, was able to maintain his family.

[5] Adam, March 1, 1762. (M. 398.) Duncan, Feb. 17. 1810. (F. C.)

[6] Christie, July 6. 1802. (M. Ap. 5. Aliment.)

[7] Brown, July 10. 1824. 3. Shaw and Dunlop, 188.

[8] Adam, July 11. 1764. (M. 400 and 15419.) Duncan, Feb. 28. 1809. (F. C.) Yuill, Dec. 21. 1815. (F. C.) The contrary was found in a special case, where the widow of the son of the proprietor of an entailed estate was also the mother of the heir of entail. De Courcy, July 3, 1803. (M. Ap. 8. Aliment.)

36. Failing paternal ascendants, the burden of maintaining children falls on those of the mother.[1]

37. Children, in like manner, are reciprocally bound to support their paternal and maternal ascendants.[2]

38. If a pauper have descendants capable of maintaining him, it would rather seem that they are liable primarily before the father or other ascendants.

39. A husband is of course bound to support his wife, and the obligation descends to his representatives lucrati by his succession. See infra, 46.

40. No obligation lies upon brothers and sisters, or other collateral relations, to aliment each other, unless in the case of their succeeding to the property of an ascendant or descendant of the pauper.[3] In such cases the party succeeding, however distant his relationship, is bound to aliment, out of that succession, all those whom the person he represents might have been compelled to support,[4] and in the order in which that person would have been liable.[5]

A person thus lucratus, is in like manner bound to aliment the widow of the deceased.[6]

The contrary of this was found in one case, where the question related to a woman in the lower ranks of life; but she had been accustomed to work for her bread before marriage, and was in no way disabled from doing so still.[7] In a later case, the Court unanimously found a widow in the lower

[1] 1 Erak. 6. 56.

[2] 1 Bank. 6. 20. Brown, July 20, 1710. (M. 448.) Anderson, Jan. 25, 1754. (M. 427.) Paterson, June 25, 1761. (M. 429.) Campbell, Feb. 25, 1809. (F. C.) Ettrick, Feb. 14, 1824. (2 Shaw and Dunlop, 662.)

[3] 1 Bank. 6 (digression) 6. Paterson, June 26, 1761. (M. 429.)

[4] 1 Ersk. 6, 58. Seatoun, Feb. 11, 1764, (M. 431.) Scott, (M. App. 1. Parent and Child,) as to sisters uterine. Buchanan, Jan. 21, 1813, (F. C.) Dalziel, Dec. 14, 1788. (M. 450.) as to a niece.

[5] Douglasses, Feb. 8, 1789. (M. 425.)

[6] Lowther, Dec. 15, 1786, (M. 485,) even when the marriage was dissolved by the husband's death, within year and day, and without issue. See also Thomson, March 6, 1778, (M. 434.) Young, Jan. 27, 1790, (M. 401.)

[7] M'Cowan, May 20, 1809, (F. C.)

ranks of life, entitled to an aliment out of her husband's estate.[1]

41. A father is not obliged to pay his children an aliment in money; he can only be compelled to receive them into his own house, and give them the same entertainment he takes to himself: should he refuse to receive them, or treat them ill, he may be obliged to allow an alimony.[2] The obligation, however, on the part of a child to aliment his parents, will not be implimented by an offer to receive them into his house, if able to afford a separate maintenance.[3] But if he be unable to afford a separate maintenance, this will be a sufficient fulfilment of his obligation.[4]

42. The degree of poverty which would exempt any one from maintaining those whom he is bound to support by natural obligation, seems to be somewhat doubtful. Where the claim is not for mere sustenance as a pauper, but for an aliment extending to the comforts, as well as to the necessaries of life, a greater degree of wealth would certainly be required than in the class of cases falling under our consideration. But when the claimant is in absolute want, and labours under an incapacity to work, and demands only what is necessary for his actual subsistence, it would rather seem that the doctrine laid down by Mr. Erskine, as to the obligation of parents to their children, should apply equally to the case of all ascendants and descendants. That writer observes,[5] that 'though the 'parent himself should be reduced to necessitous circum-'stances, yet as long as he keeps house, he is obliged to give 'the same entertainment that he takes to himself, to such of 'his children as have not sufficient funds for their mainten-'ance.'

It is, however, observed by Lord Stair,[6] that if the parent's

[1] Smith, March 11, 1812, (F. C.)
[2] 1 Bank. 6, 13.
[3] Jackson, Nov. 17, 1825. (4 Shaw and Dunlop, 160.)
[4] Greig v. Crawford, 1817. (Not rep.)
[5] 1 Ersk. 6, 56.
[6] 1 Stair, 5, 7.

means are merely sufficient to support himself, 'there must 'first be reserved to the parents that which is necessary for 'their subsistence, so that when they are not able to entertain 'their children, they may lawfully expose them to the mercy 'and charity of others;' and, in accordance with this principle, the Court, in a late case, refused to impose the burden of maintaining two grandchildren on an old man 67 years of age, and having no property but his cart and horse, who originally had been a farm servant, but had lost the use of one of his hands, and was now employed as a coal carter, in which employment his whole gains in the year, deducting house-rent and the keep of his horse, amounted merely to £5, out of which he had to support himself and his wife, a woman 69 years old, and almost constantly confined to bed by infirm health.[1]

Whatever be the degree of want which would relieve a man from this natural duty, it is undoubtedly no ground of exemption from the obligation of maintaining ascendants and descendants, of whatever degree, that the party from whom aliment is claimed is a common labourer, and in the lower ranks of life.[2]

43. Liferenters of lands are bound to aliment the fiars.[3]

44. Creditors are obliged to maintain their poor debtors in jail under the Act of Grace.

[1] Wilson, Feb. 18, 1825. (3 Shaw & Dunlop, 375.)

[2] Ettrick, Feb. 14, 1824. (2 S. & D. 662.) Wilson, Feb. 18, 1825. (3 S. & D. 375.) In this last case, the Court assoilzied a grandfather from a claim for aliment, but expressly on the ground that he was 'unable to bear the burden of alimenting, or 'even of contributing to the aliment of his grandchildren, which burden he would be 'legally bound to bear if his circumstances enabled him to bear it;'—and it was observed from the bench, that if he 'could have received the children into his house, he 'would have been bound to have done so; but as this was impossible in consequence 'of the state of his wife's health, and as any payment in money would reduce them 'both to the condition of paupers, their Lordships were agreed that, in the peculiar 'circumstances of the case, he should not be subjected in the payment of aliment, 'from which the mere circumstance of his being a common labourer in the lower 'ranks of life would not have exempted him.'

[3] 1491, c. 25.

Prisoners under sentence for a crime, must be alimented by the burgh of imprisonment.[1]

45. Direct actions for permanent aliment, are competent before the Supreme Court only,[2] with the exception of applications under the Act of Grace, which may be summarily discussed before the magistrates of the burgh where the debtor is imprisoned. But actions at the instance of third parties or parishes for relief of sums advanced for the support of individuals whom they were not bound to aliment, may competently be brought before the Judge Ordinary,[3] who, it would rather seem, might also award an interim provision to the party to prevent him from starving, even in a direct application at his instance.[4]

46. An action of aliment, at instance of a wife against her husband, is competent in the Commissary Court alone,[5] although the Court of Session would probably interfere, and award an interim aliment, if necessary to prevent absolute starvation.[6]

[1] Ramsay, &c. March 1, 1825. (3 Shaw & Dunlop, 400.)

[2] 1 Bank. 6 digression, 13. Jackson, March 2, 1825. (3 S. & D. 407.)

[3] Ettrick, Feb. 14, 1825, (2 S. & D. 662.) The Court, in a case of this kind, brought by advocation from the sheriff, remitted to him to take a proof, thus necessarily implying that he had jurisdiction.

[4] Dicta of the Court, in Jackson, ut supra.

[5] Wylie, July 8, 1824. (3 S. & D. 174.)

[6] Ibid.

CHAPTER III.

OF SETTLEMENT.

47. To entitle persons to parochial relief, besides the requisites of poverty and disability to work, it is necessary that they have a settlement in a parish in Scotland.

A settlement can only be acquired in one of the four following ways:—

1. Residence; 2. Parentage; 3. Marriage; 4. Birth.

SECTION 1.

Settlement by Residence.

48. There is scarcely any restriction as to the persons who may acquire a settlement by residence; and foreigners are equally entitled to obtain this privilege as natives.[1]

49. There are, however, some exceptions to the general rule, that all persons can acquire a settlement in this way. (1.) A married woman, during the subsistence of her marriage, cannot obtain by residence a settlement independent of her husband, although she be deserted by him, or even although he have no known settlement.[2] In the event, however, of a married woman residing with her husband in a parish where

[1] Higgins, July 9, 1824. (3 Shaw and Dunlop, 183.)
[2] Pennicuick, March 8, 1813, (F. C.)

he does not acquire a settlement prior to his death, it would seem somewhat unjust not to allow the widow the benefit of her residence preceding that event, so that she might acquire a settlement by residing for the additional period requisite to complete the term of three years required by law.

50. (2.) Children under fourteen years of age cannot obtain a settlement by residence, even when living out of family, and in a different parish from their parents, or deserted by them, or although the parents be dead.[1]

Even when the child has attained the age of fourteen, if, by reason of insanity or bodily infirmity, he does not become emancipated, but remains a member of his father's family, he cannot acquire by residence a settlement in his own right. But it has been found, that where a child above that age leaves his father's family, and lives in another parish as an apprentice, he acquires there a settlement by residence, although he derive no profits from his labour, and be wholly supported by his father.[2] See infra, 76, et seq.

51. (3.) It has been doubted whether idiots can ever acquire a settlement in this way, having no will of their own to fix on a place of residence. While their father is alive, they probably could not do so, as they would still be held to be merely members of his family; but otherwise, the terms of the Acts of Parliament do not necessarily imply that any animus, on the part of the pauper, is requisite to his acquiring a legal settlement; the maintenance of the poor is laid on those parishes in which they 'have had their most common 'resort,' or 'have most haunted' for the last three years—expressions which do not necessarily imply any will or intention on the part of the pauper.[3] In general, however, idiot pau-

[1] Inveresk, March 3, 1757, (M. 10571.) Gladsmuir, June 11, 1806. (M. Ap. Poor 5.) Howie, &c. January 25, 1800, (M. Ap. Poor 1.) Pennicuick, March 8, 1813, (F. C.)

[2] Cockburnspath, June 9, 1819, (F. C.)

[3] In the case of Gladsmuir, June 11, 1806, (M. Ap. Poor, 5.) the Lord Ordinary (the late Lord Methven) founded his judgment on the assumption, that a

pers cannot acquire a settlement by residence, as falling under the disqualification which we come next to notice.

52. (4.) Persons who are proper objects of parochial relief, cannot acquire a settlement by residence for any length of time, even although they may never have received aid from the parish.[1] This doctrine is founded on the interpretation which has been given to the provisions of the Acts of Parliament, which declare, that paupers shall be supported by those parishes where they have resided for three years previous to 'taking up the lists;' and it has been held, that if the pauper has been a fit object for being placed on the list of poor, it does not matter that he has not been actually admitted on the roll, but that he must be maintained by the parish where he has resided three years prior to his becoming entitled to be placed on the list. A merely temporary disability by sickness will not prevent a person from acquiring a settlement by residence, as such temporary disability does not render him an object of parochial support.

53. It has been thought by some, that a person cannot acquire a settlement by residence unless he have supported himself by his labour; but the Acts of Parliament do not seem to countenance such a doctrine,—'haunting' and 'resorting' being all that is required by them. Indeed, it would scarcely be possible ever to ascertain who were entitled to acquire a settlement in this way, if mere poverty, unaccompanied by disability to work, were a sufficient disquali-

settlement by residence could not be acquired by an idiot. This interlocutor was, however, recalled; but the decision of the Court proceeded on grounds totally independent of this question.

[1] Runciman, January 24, 1764, (M. 10583.) In this case, a labourer had resided in the parish of Mordington for seventeen years. In 1769, he removed to the neighbouring parish, and next year he was struck with blindness, and so deprived of the means of subsistence; but he did not apply for relief till 1777. The parish of Mordington refused him relief; the Court held, that he had not acquired a new settlement, but must be supported by the parish of Mordington, in respect he had resided there 'until a year prior to his blindness, and afterwards acquired 'no funds for subsistence.'

fication; and, accordingly, the Court have held, that a settlement may be acquired by a person who has not supported himself by his labour. Thus, a lad was found to have acquired a settlement in a parish by residence as an apprentice, although he was wholly supported by his father.[1] Here, it is true, the pauper had been industriously employed; but, in another case, a common vagrant was found to have acquired a settlement in the parish where she had most haunted for the last three years, to the effect of making that parish liable to support her natural child, in a question with the parish of the child's birth, and that where the woman herself had possessed a previous settlement.[2]

54. It has not been decided whether a person, without funds, and disabled from working, can acquire a settlement by residence while supported by relations bound in law to aliment him. There is certainly a difficulty in admitting anything to constitute a disqualification but the possessing an absolute right to compel the parish to grant relief, and to place the person on the list of poor; yet, at the same time, it may be argued, that a pauper in such circumstances is truly a proper object of relief, although the burden is, in the meanwhile, borne by persons primarily liable, and that allowing a person in such a case to acquire a settlement, would have the effect of encouraging collusive residence for the sole purpose of acquiring a right to relief.

Undoubtedly, however disabled a person may be, if he have funds of his own sufficient to support him, he will acquire settlement by residence in such circumstances.[3]

55. Mere residence is sufficient to obtain a settlement, without any of the accompanying requisites which are neces-

[1] Cockburnspath, July 9, 1819, (F. C.)

[2] Rescobie, Nov. 28, 1801, (M. 10589.)

[3] This is necessarily implied in the interlocutor of the Court in the case of Runciman, supra, 52, note 1.

sary by the law of England,—such as, possession of a house or estate, hiring and service, or the like.[1]

56. The residence, it would rather appear, must be continuous,—that is, for three years successively, without interruption of any one year; but it is not necessary that it should be constant. It is sufficient to entitle a pauper to a settlement in any parish, that he has had there his principal residence—his 'most common resort,'[2]—his head-quarters, as it were, although he may have been absent for a considerable part of each year, and even although he may never have had a house in the parish. Thus, a pauper, who had taught dancing in a burgh during fourteen successive years for four or five months in winter, was found to have acquired a settlement there by residence, although he never had a house in the burgh, and although he followed his profession in other places during the rest of the year.[3]

57. Our Acts of Parliament contain very contradictory enactments as to the period of residence necessary to acquire a settlement. The statute 1579, c. 74, establishes seven years as the rule, which is altered to three years by the act 1672, c. 18, while the proclamation, 29th August, 1693, again returns to the provision of the act 1579. But it is now a fixed point in practice, that a residence of three years is sufficient to acquire a settlement.[4]

58. When a person has resided for three years in several parishes successively, his place of settlement is that where he has last had a continued residence for three years, prior to his poverty and disability. Thus, a pauper who had resided forty years in the parish of his birth, and subsequently in three other parishes for more than three years in each, was

[1] Dalmellington, December 3, 1800, (Mor. Ap. Poor, 2.)

[2] 1579, c. 74.—1672. c. 18.

[3] Dalmellington, ut supra.

[4] Dunse, June 5, 1745, (M. 10553.) Crailing, March 7, 1767, (M. 10573.) Hutton, December 6, 1770, (M. 10574.) Waddel, June 14, 1781, (M. 10583.) Runciman, January 24, 1784, (M. 10583.)

found to have his settlement in that parish where he had had his last residence for three years.[1]

In the case of Crailing here alluded to, the interlocutor of the Court characterizes the parish found liable as that where the pauper 'had resided during the immediate three 'years previous to his application for charity;' but it has since been determined, that it is not the residence next preceding the application for relief which fixes the settlement, but that next preceding the applicant's having become a proper object of parochial support.[2]

59. Where a settlement has once been obtained, it is not lost by mere lapse of time and intermission of residence, unless a new settlement has been acquired. So it was found in the case last quoted, after the lapse of nine years, and a residence for that period in another parish; and so also it was held as to a woman who had resided three years in a parish in England, but whose residence was not such as, by the law of that country, to acquire for her a settlement, and this although she was entitled to be supported there; every parish in England being liable to support the poor within their bounds, even when they have no settlement, until removed to the place of their legal settlement; and the woman, in this case, having only a Scotch settlement, could not then (prior to the act 59, Geo. III. c. 12,) have been legally removed.[3]

60. But so soon as a new settlement by residence is acquired, the parish of the former settlement is completely liberated.[4] And that this would hold, although the new settlement were in England, may be inferred from the first decision in the case of Brown, above alluded to.[5] There a man having acquired a settlement in a Scotch parish, removed to England with his

[1] Crailing, March 7, 1767, (M. 10573.) See also Hutton, December 6, 1770, (M. 10574.)

[2] Runciman, January 24, 1784, (M. 10583.) See supra, 52, note 1.

[3] Brown, March 4, 1806, (M. Ap. Poor, 4.)

[4] Crailing, March 7, 1767, (M. 10573.) Hutton, December 6, 1770, (M. 10574.)

[5] Brown, ut supra, note 4.

wife and family, and after living there three years, he deserted them. In an action for aliment, at the instance of the wife and children, the Court, by their first judgment, found that the Scotch settlement was lost; and it was only on the ground that their residence in England had not acquired for them a legal settlement, that the claim against the Scotch parish was ultimately sustained.

61. Residence in Scotland necessarily implies residence within a parish, as there are in this country no lands extra-parochial.[1]

62. Doubts were at one time entertained, whether the parish of a pauper's birth, or that where he had resided the requisite period, was the place of his settlement, and primarily liable in his support; but it is now fixed by a series of decisions, that the last place where a legal settlement has been acquired by residence is primarily liable, and that the parish of a pauper's birth can only be called on to support him when he has acquired no subsequent settlement, or where it is unknown.[2] See infra, 85.

63. The settlement of a woman acquired by residence is suspended by her marriage. See infra, 65.

64. There are two cases in which it has been held, that a parish where a pauper is residing, or has been found, although he has no subsisting settlement there, is bound to advance an interim aliment in the first instance, with relief against his proper parish when ascertained.

(1.) Where an idiot, or insane person, has been apprehended, for purposes of public police, the parish where he haunted when taken up must advance an aliment in the first instance, until his parish be discovered.[3]

[1] Ross, June 8, 1824. (3 Shaw and Dunlop, 81.)

[2] Dunse, June 5, 1745, (M. 10553.) Crailing, March 7, 1767, (M. 10573.) Waddel, June 14, 1781, (M. 10583.) Dalmellington, January 22, 1822. (1 S. & D. 299.)

[3] Scot, November 13, 1818, (F. C.) It does not distinctly appear on what precise principle the judgment of the Court proceeded. The only provision in the

This does not hold, however, if the lunatic, having been indicted for a crime, and found to have committed it, but under the influence of insanity, be confined by order of the Court of Justiciary;[1] the burden, in such a case, must be borne by the crown.[2]

(2.) Where a child is exposed whose parents are unknown, the parish of exposure must support it.[3]

SECTION 2.

Settlement by Marriage.

65. A WOMAN, by marriage, immediately acquires the settlement of her husband.

Her own settlement, should she have any, is thereby suspended, and does not revive by the husband's desertion.[4]

66. Although the husband have no known settlement, it has still been held by the Court, that the maiden settlement is suspended in consequence of the marriage.[5] See, however, infra, 88.

This is contrary to the English rule, which, in truth, appears the more reasonable of the two. By the law of that country, a woman's settlement is held to be suspended by her

acts of Parliament which might seem to sanction it, is that in the act 1579, c. 74, which burdens parishes, in which vagrants have been apprehended, with their maintenance while imprisoned; but this can scarcely apply to the case of a lunatic pauper.

[1] Commissioners of Supply of Wigtonshire, Feb. 21, 1823. (2 Shaw and Dunlop, 210.)

[2] Commissioners of Supply of Wigtonshire, June 5, 1827. (5. S. and D. 359.)

[3] Tranent, June 29, 1737, (M. 10552.) This case went farther than the doctrine laid down in the text, and found the parish of exposure liable, though that of the parents' settlement and of the child's birth was known. It would not, however, be followed to this extent in the present day.

[4] Pennicuick, March 3, 1813, (F. C.) [5] Ibid.

coverture in those cases only where the husband possesses a known settlement.[1]

It has also been found, that even in the case of a woman deserted by her husband who has no settlement, she cannot acquire by residence a settlement either for herself or children residing with her.[2] See supra, 50.

67. No question has yet arisen in our Courts as to whether a woman's maiden settlement is restored to her by the death of her husband; but, from the practice of the country, and from the principle adopted in the analogous case of children, who, while in puberty, are held to retain their father's settlement after his death, it may safely be laid down, that the settlement of the deceased continues to be that of his widow, until she have acquired a new settlement by residence, or by a second marriage.[3]

68. In the event of a divorce, it would seem necessarily to follow, that the woman should thereby lose her husband's settlement, and consequently that her maiden settlement should revive.

69. The settlement acquired by marriage cannot attach to a woman's legitimate children, by a former marriage, whose settlement, it would rather seem, is, in no case, determined by that of their mother. But it is a more difficult question, whether it does not attach to her illegitimate children in the same way as would a settlement acquired by residence subsequent to their birth. As to this, see infra, 74.

SECTION 3.

Settlement by Parentage.

70. The settlement of children not emancipated[4] is deter-

[1] Rex v. Willborough Green, 2 Bott and Const, 70. Rex v. St. Botolph Bishopsgate, Bur. S. C. 367. Rex v. Westerham, 2 Bott and Const, 77.

[2] Pennicuick, March 13, 1813, (F. C.)

[3] This appears to be the law of England. St. Giles v. Eversly, 2 S. C. 116.

[4] The term 'emancipation' is somewhat vague when used in reference to

mined by that of their parents, whether acquired prior or subsequent to the birth of the children.

Legitimate children follow the settlement of their father,[1] illegitimate children that of their mother,[2] even where the father is known, as the law still holds the father of a bastard to be uncertain.[3] Should this legal uncertainty, however, be removed, by a subsequent marriage between the parents, the children thus legitimated would necessarily have their settlement transferred to their father's parish. So far as our decisions have yet gone, there is no authority for holding that children have, in any case, a claim on the parish of the settlement of any parent or relation other than the father, where they are legitimate, or the mother, where they are illegitimate.[4] The same rules which regulate the derivative settlement of legitimate children, in reference to their father's settlement, apply to that of bastards, in reference to their mother's.

71. All the decisions above quoted, as to children acquiring the benefit of their parents' settlement, were pronounced in cases where that settlement had been acquired by residence, and no dispute seems to have arisen between the parish of the child's birth and that of the father's.

72. The death of the parent, though prior to the application for relief, does not deprive the children of the benefit of his settlement.[5]

73. It was once found, that orphan children, who had not resided three years in any parish, had no settlement in their

questions of settlement. It has been adopted, however, as being the technical phrase in use in the English law. As to the period of emancipation in reference to this subject, see infra, 76, *et seq.*

1 Coldinghame, July 28, 1779. (M. 10582.) Howie, January 25, 1800. (M. Ap. Poor, 1.)

2 Rescobie, Nov. 28, 1801. (M. 10589.) Gladsmuir, June 11, 1806. (M. Ap. Poor, 5.)

3 Edinburgh, June 11, 1806. (M. Ap. Poor, 6.)

4 By the law of England legitimate children enjoy the benefit of their mother's settlement, when that of their father is unknown. Rex v. St Botolph's. Burr. S. C. 367.

5 Coldinghame, July 28, 1779. (M. 10482.) Gladsmuir, June 11, 1806. (M. Ap. Poor, 5.)

parents' parish, but must be maintained by that of their own birth, 'in respect they had not resided three years in any 'other parish."[1] But this decision has been overruled in subsequent cases; and it may now be considered as fixed, that the residence of the child (whether in family with the parent or in a different parish) is of no importance as to the question of its settlement. So it had been found in a prior case, in which, after the father's death, the child had removed with her mother to a neighbouring parish, where they had resided for upwards of three years without charity. There the Court held, that the parish where the father had acquired a settlement by residence prior to his death, and in which also the child had been born, was bound to maintain her, and not the parish of her own residence.[2] The same principle was followed in a later case. A child, born in Arbroath, was removed with her parents, a few days thereafter, to the parish of St. Vigeans, from whence she was sent, before the expiry of three years, to the neighbouring parish of Alyth, and she resided in Alyth with an aunt for five years. The father, in the meantime, continued to live in St. Vigeans for considerably more than three years. On his enlisting as a soldier, and deserting his family, the Court found that the parish of St. Vigeans, where he had acquired a settlement, was liable to support his child, and assoilzied the parish of the birth, and that of the child's own residence.[3] In like manner, where a bastard, born in the parish of Salton, was taken to the parish of Gladsmuir immediately after her birth, and resided there with her grandmother for ten years, after which she went to live with her mother, who had, in the meantime, acquired a settlement by residence, and subsequently by marriage, in the parish of Preston, she was found, after her mo-

[1] Melrose and Stitchell, January 24, 1786. (M. 10584.)
[2] Invereak, March 8, 1757. (M. 10571.)
[3] Howie, January 25, 1800. (M. Ap. Poor, 1.)

ther's death, to have her settlement in Preston, although she herself had not resided there for three years.[1]

74. By the decision last quoted, it was determined generally that a bastard child follows its mother's settlement; but, in that case, the mother had first acquired a settlement by residence, and had thereafter married a man having also a settlement in the same parish; so that it may not perhaps be held to have determined the question, whether a woman acquires by marriage the settlement of her husband, not only for herself, but for her illegitimate children also. That such a result should follow, does seem somewhat inconsistent with equity. At the same time, it may be contended, that as the maiden settlement has been held to be suspended by marriage,[2] it would be inconsistent to hold it effectual to the child, while it is not so to the mother. But, on the other hand, it may be said that the settlement acquired by marriage is wholly personal, resulting solely from the relation between husband and wife, whereby she becomes a member of the husband's family. In the English law, this distinction has been admitted between a settlement acquired by a woman in her own right, and one acquired in right of her husband; so that if a woman, prior to her marriage, acquire a settlement in her own right, and, after her husband's death, acquire a new settlement by a second marriage, her children of the first marriage, if the father's settlement be unknown, possess that acquired by her in her own right,[3] (which, *quoad* herself, is suspended,) and not the settlement of her second husband;[4] and this appears to be the view most consistent with the principles of our own law.

75. The derivative settlement of parentage ceases on the

[1] Gladsmuir, June 11, 1806. (M. Ap. Poor, 5.)
[2] Pennicuick, March 3, 1813, (F. C.)
[3] See supra, 70.
[4] Rex v. St. Giles's in the Fields. 2. Bott and Const, 24.

child's acquiring a settlement of his own by residence, (see supra, 50,) or, in the case of a daughter, by marriage, and it can never be revived.

76. It has not been decided in Scotland, whether a child, by emancipation, loses his derivative settlement by parentage previously acquired. The law of England seems to make no distinction between a derivative settlement, and one acquired by the party's own act,—they are equally held to subsist till discharged by the acquisition of another settlement.

77. After emancipation, however, the child will not follow the settlement of his father, subsequently obtained.

78. A great variety of questions has occurred in England as to the circumstances which emancipate a child, but it is unnecessary here to notice them particularly. They will be found collected together in Bott and Const's Poor Laws, vol. ii. chap. 2. sect. 3.

79. The general principle of the law of England, is stated by Lord Kenyon in these words:[1]—'The rule to be extracted from the cases is this: If the child be separated from its parents, and, without marrying, or obtaining any settlement for himself, return to them during the age of pupilage, he is, to all intents, a part of his father's family, and his settlement will vary with that of his father; but if, when the time arrives at which, in estimation of law, the child wants no further protection from the father, the child remove from the father's family, he is not, for the purpose of a derivative settlement, to be deemed part of that family.'

80. In the same way, it would probably be held in Scotland, that a child remains a part of his father's family, for the purpose of a derivative settlement, 'until he marry, come of age, gain a settlement of his own, or in some way contract a relation inconsistent with the idea of his continuing any longer part of such family.'

[1] Lord Kenyon in Rex v. Roach, 6. T. R. 427.

81. Scarcely any questions, however, relative to this subject, have been decided in Scotland. Indeed, the only points which have been settled by decisions in this country relative to such cases, are, that idiots (even when illegitimate) do not lose the parents' settlement by attaining the age of fourteen, although the parent be dead, and that children under fourteen do not lose the settlement of the parent by mere residence separate from the parent, or by his desertion or death.[1] And it has also been found, that a boy of fourteen, by serving an apprenticeship for three years, in a parish different from that of his father, acquires a settlement in his own right, and of course loses his derivative settlement.[2]

83. A daughter is necessarily emancipated by her marriage.[3]

SECTION 4.

Settlement by Birth.

84. When a pauper has no other settlement, he is entitled to be supported by the parish where he was born.[4]

85. But paupers cannot have recourse on the parish of their birth, if they have acquired a settlement by residence,[5] or during the subsistence of a settlement by marriage,[6] or by parentage.[7]

[1] Gladsmnir, June 11, 1806. (M. Ap. Poor, 5.) Howie, January 25, 1800. (M. Ap. Poor, 1.) Inveresk, March 8, 1757. (M. 10571.)

[2] Cockburnspath, July 9, 1819. F. C.

[3] 1 Bank. 6, 13. 1 Ersk. 6, 54.

[4] 1579, c. 74.—1672, c. 18.

[5] Dunse, June 5, 1745. (M. 10553.) Crailing, March 7, 1767. (M. 10573.) Dalmellington, January 22, 1822. (1. Shaw & Dunlop, 299.)

[6] Pennicuick, March 3, 1813. (F. C.)

[7] Coldinghame, July 28, 1779. (M. 10582.) Howie, January 25, 1800. (M. Ap. Poor, 1.) Rescobie, Nov. 28, 1801. (M. 10589.) Gladsmuir, June 11, 1806. (M. Ap. Poor, 5.) Notwithstanding the case of Stitchell and Melrose, January 24, 1786, (M. 10584,) which is now disregarded.

86. According to a late decision, birth does not seem to afford even *prima facie* evidence of settlement.[1]

87. It was in one case held, that where an infant child had been exposed, the parish of the exposure was liable primarily to that of the birth:[2] but the soundness of that judgment seems extremely questionable; and although no similar case has subsequently occurred, it would not probably be followed as a precedent. Indeed, in a late case,[3] where the liability to support a child was disputed, and in which the parish of the parents' residence, that of the child's birth, and that of its exposure, were all parties, it does not seem to have been contended that the parish of exposure could in any event be liable; and certainly no countenance is given by any of our Acts of Parliament to the doctrine, that the circumstance of a child's exposure in a parish, creates any liability on that parish to support it. If the place of birth, or the residence of the father, were unknown, it would probably be held, that the parish of exposure, as the only one with which it had any connexion, would be held to be that of its birth, and so bound to support it; but, further than this, the rule adopted in the case of Tranent, cannot possibly extend.

88. A child, as already stated, is not entitled to claim support from the parish of its birth, if the father have another settlement. But the case may be different, where the father, having no settlement, is indigent, and unable to work, or has deserted his family. Here it may be contended, that as the child has not acquired any settlement by parentage, his original settlement by birth must subsist; and there appears great justice in such a plea. Nevertheless, in the analogous case of a wife, whose husband was an Englishman, who had no known settlement, and had deserted his family, the Court held that she was not entitled to permanent relief for herself

[1] Dalmellington, Jan. 22, 1822, (1. Shaw and Dunlop, 299.)
[2] Inveresk v. Tranent, June 29, 1737. (M. 10552.)
[3] Rescobie, Nov. 28, 1801. (M. 10589.)

and children from the parish of her maiden settlement.[1] In this case, however, the Court intimated an opinion, which would lead exactly to the same result, as if the maiden settlement of a married woman, and that of children by birth, were held to subsist when the husband or father possessed no settlement of his own. This opinion was, that the family was, in such circumstances, entitled to temporary relief, until the settlement of the father was discovered. No judgment was given on this principle, as the applicants acquired the means of supporting themselves; but the doctrine had the sanction of the Court; and the result which necessarily follows from it is this, that although the original settlement of married women, or of children not emancipated, be said to be suspended, notwithstanding the husband or parent having no settlement, yet, in reality, the parish of such prior or original settlement is bound to support them, so long as the settlement of the husband or parent remains unknown.

89. A case of equal difficulty, which has occurred in practice, but has not yet come under the cognizance of our Courts, is where an English woman, whose English settlement is known, has had a bastard born in Scotland; for although the woman's settlement be known, yet, by the law of England, a bastard has no claim on its mother's parish, but must be supported by that of its birth. It would rather seem that a bastard, in such a situation, must be considered in the same light with a legitimate child whose father has no settlement, and must be supported by the parish of its birth, provided (as is always to be understood in such cases) that the parent is incapacitated from maintaining it, is dead, or has deserted it.[2]

90. By the law of England, a child, whose mother has removed fraudulently into a neighbouring parish, for the pur-

[1] Pennicuick, March 3, 1813. (F. C.)

[2] It seems somewhat erroneous in principle to be guided in questions of settlement in this country, by any rights which the parties may have in another; although, undoubtedly, the Court have been in use to take such circumstances into consideration.

pose of being delivered, is held to be born in the parish from whence the mother removed; and it has been determined in this country, in such a case, where the mother had removed secretly into a neighbouring parish, for the purpose of being delivered of a bastard child, that the child had no settlement in the parish where it was so born.[1] But the question was not agitated whether the parish from whence the mother had removed, was to be considered as if it were the place of birth. The principle of the decision, however, would certainly lead to this inference.

91. In like manner, it would probably be held with us, (as it has been determined in England,) that the parish of actual birth is not to be considered the place of settlement in cases such as where the mother, being a pauper, is delivered in the course of her compulsory removal to her own parish,[2] or during confinement in prison,[3] or in a house for reception of the poor, or an hospital, not in the parish where she was dwelling during her pregnancy,[4] or the like.

SECTION 5.

Removal of Paupers.

92. By the act 1579, c. 74, paupers unable to support themselves, (with the exception of 'leprous peopil and bed-'fast peopil, quilks may not be transported,') are ordained to remove to the parish of their settlement, under the penalty of being held and treated as vagabonds. This statute provides, that the heritors and kirk sessions, and the magistrates in burghs, shall give testimonials to the poor passing to their own

[1] Dalmellington, January 22, 1822. (1 Shaw & Dunlop, 299.)
[2] Rex v. Jane Grey, S. & R. 41. Boreham and Waltham, 3, Carth. 397.
[3] 54 Geo. III. c. 170, § 2. Elsing v. Hereford, 1 Sess. Cases, 99.
[4] 54 Geo. III. c. 170, § 3.

parishes, who shall be entitled to beg by the way, 'sa as they 'pass the direct way, not resting twa nichtes togidder in ony 'ane place, without occasion of seekenesse or storme impede 'them.'

93. In the event of paupers refusing to pass to their own parishes, but continuing to beg, and so becoming liable to be held as vagabonds, an order of transporting them is directed to be enforced, by the proclamation 11th August, 1692, which charges all the lieges 'to apprehend such beggars as they shall 'find vaguing without their own parish, and forthwith carry 'them to the principal heritor of the parish where they were 'apprehended, if it be in landward, and to one of the bailies 'in towns, who shall examine the beggar in the shire and pa-'rish where he was born, and shall direct him forthwith to the 'nearest parish that lies in the road to the parish of his birth, 'and deliver him to the nearest heritor that lies in that high-'way in the next parish; and so forth from parish to parish in 'the same road until he arrive at the parish of his nativity; 'who shall then list him and entertain him amongst the poor. 'And the heritors to whom the vagabonds are delivered, are 'hereby authorized and required, to send two fencible men of 'their parish to convey every beggar to the heritor of the next 'parish, and to send a note of the beggar's name, and the pa-'rish where he was born,[1] which is to be delivered to the next 'heritor who receives him; and every heritor who receives 'him is to return a note signed of his own writ, and so forth, 'from heritor to heritor, in every several parish.'

It is further provided, that if the beggar shall attempt to make his escape in the course of his transportation, he shall be scourged, and fed on bread and water during the rest of his journey.

Heritors failing in the duty of sending such beggars, are declared liable to a fine of £20 Scots *toties quoties*, for behoof

[1] This proclamation erroneously adopts the birth of the pauper as the rule for fixing his settlement.

of the poor; and the fencible men failing or refusing to convey them, in two merks Scots, to be applied in the same way. These fencible men, it is also declared, shall be chosen by turns in each parish.

94. The expense of removal must of course be borne, in the first instance, by the several parishes through which the pauper passes, but with relief, it should seem, against the parish of his settlement, on the same principle, that it must relieve another parish of sums advanced for his support.

95. No one can be removed from a parish, in which he has no settlement, merely on suspicion that he may become chargeable, or even although he do not support himself, so long as he does not beg.[1]

96. A practice has of late years become very prevalent, of 'warning away' (as it is called) persons settling in a parish, who, it is supposed, may ultimately require parochial support. This is done with the view of putting the party warned in *mala fide*, so as to prevent him from acquiring a settlement. However advantageous it may be to the parish funds to create such a belief, there seems to be no authority for giving to such warning the effect of depriving persons of the privilege which the law has conferred on residence.

[1] In England, it was only by a late statute, (35 Geo. III. c. 101,) that persons were declared not to be removable until 'they shall have become chargeable.'

CHAPTER IV.

OF RELIEF.

97. The nature and amount of the relief to be afforded to any individual pauper, has been committed, in a great measure, to the discretion of the heritors and kirk session. They may award a certain periodical sum, leaving the pauper to procure for himself with it the necessaries of life,[1] but they are not bound to grant an aliment for any fixed and definite future period;[2] they may establish the paupers in poors-houses together, or separately in lodgings with private individuals,[3] and supply them with meat and clothes, or allow them a sum of money for that purpose, or, in fact, they may provide for them in the manner which they shall deem most expedient in the circumstances of the case.

They are also empowered to grant the pauper a badge, or token, to entitle him to beg within the bounds of the parish;[4] but it would seem that it is in the option of the pauper to avail himself of this privilege, or to insist on support from the parochial funds.

98. Such poor as are able to do some work, may be employed by the parish, and the proceeds either applied to their individual relief, or added to the general fund at the disposal of the heritors and kirk session;[5] and those who refuse to work, so far as they are able, or beg without licence, or be-

[1] 1579, c. 74.—1672, c. 18.
[2] Robert, Feb. 5, 1825. (3 Shaw & Dunlop, 348.)
[3] 1579, c. 74.—1661, c. 38. [4] 1672, c. 18. [5] 1579, c. 74.

yond the bounds of their parish, are liable to be treated as vagabonds, and of course to have their allowance stopped.[1]

99. By the act 1617, c. 10,[2] poor children may be delivered by the magistrates of burghs or the kirk sessions of the parishes where they are found, to any of his Majesty's subjects, who shall be entitled to their services, and to any gains they may make by their labour, until they attain the age of 30 years. To authorize this temporary slavery, the consent of the children themselves is necessary, if they be above 14 years old; and if they be under that age, that of their parents, or where these are dead or unknown, of the magistrates and kirk sessions. Mr. Erskine[3] quotes this act as being still in observance; but it certainly is not now resorted to in practice. Whether, in the present day, it would be held to warrant the enforcing of the compulsory service of poor children for the full period of thirty years, it may certainly be considered as in sufficient observance to the effect of authorizing the heritors and kirk sessions to employ the child at some labour, or bind him to some trade for a reasonable period of apprenticeship, and to withhold parochial relief, in the event of the parents refusing to consent to the child being so disposed of.

100. When the parish refused to grant relief, as well as when the liability to support a pauper was disputed by the parishes, it was the practice for a long period to resort indiscriminately to the Justices of Peace[4]—the Sheriff[5]—the Commissaries[6]—or the Supreme Court;[7] and these Courts were in use, not only to determine which parish was liable, and to ordain the heritors and kirk sessions to afford relief,

[1] 1579, c. 74.—1661, c. 38.

[2] Repeated by 1672, c. 18, and Proclamation, 11th August, 1692.

[3] 1 Ersk. 7, 61.

[4] Dunse, June 5, 1745, (M. 10553.)

[5] Crailing, March 7, 1767, (M. 10573.) Hutton, December 6, 1670, (M. 10574,) &c.

[6] Inveresk, June 29, 1737, (M. 10552.)

[7] Inveresk, March 3, 1757, (M. 10571.)

but also to fix the quantum of aliment to be given. It may now be considered as finally settled, that no inferior judge has any power to determine on a claim of relief in the first instance, or to review the decision of the heritors and kirk session on such questions;[1] nor will the Supreme Court itself entertain such questions, or fix the amount of aliment in the first instance. (See infra, 207, *et seq.*)

The Court of Session, however, as the supreme civil court, has the power of reviewing the determination of the heritors and kirk sessions on these questions. But the judges will not interfere with their decision as to the amount of the provision allowed, unless it be elusory, or totally inadequate.[2] (See infra, 218, *et seq.*)

101. Advocation is the proper form for the purpose of bringing a judgment of the kirk session before the Court of Session.[3]

A summary process of aliment is an inept mode of compelling the parish to grant relief;[4] an ordinary action, at instance of the pauper, would be equally so, the heritors and kirk session being a court or board, and in a totally different situation from a private party liable in aliment.

102. Both the heritors and the kirk session must be made parties to any process against them. It is not sufficient to

[1] Dunse, June 5, 1745, (M. 10553.) Paton, Nov. 20, 1772, (M. 10582.) Coldingham, July 28, 1779, (M. 10582.) Abbey Parish of Paisley, Nov. 29, 1821, (1 Shaw & Dunlop, 212.) Higgins, July 9, 1824. (3 S. & D. 183 Note.)

[2] Robert, Feb. 5, 1825, (3 S. & D. 346.) In an unreported case in 1795, Robertson against the heritors of Buncle, for the knowledge of which I am indebted to my friend, George Smythe, Esq. advocate, the Court seem to have entertained an advocation of a judgment of the Sheriff, brought on the sole ground that the allowance was inadequate. The Sheriff had awarded two shillings a week to an old man and his wife. They brought an advocation, in which the Lord Ordinary remitted *simpliciter*; and although on a reclaiming petition the Court adhered, it was only in respect of the consent of the heritors to allow an aliment of three shillings per week. The paupers again reclaimed and demanded four shillings: but their petition appears to have been refused. The heritors and kirk session seem not to have objected to the Sheriff's jurisdiction.

[3] Higgins, July 9, 1824, (3 S. & D. 183.) [4] Ibid. Note.

call the heritors or the kirk session alone; but the board, as one body, may sue and be sued as a corporate society.[1]

103. The previous observations apply equally to the case of judgments of magistrates in royal burghs, as to those of heritors and kirk sessions in landward parishes, both possessing the same authority within their respective jurisdictions in reference to the management of the poor.[2]

104. Where a pauper, during a discussion of his claim for relief, has been supported by a parish, or by individuals not legally bound to maintain him, they are entitled to be reimbursed, by the parish ultimately found liable, of the sums advanced from the date of the application for relief, although that application may have been made to the wrong parish.[3]

As to advances by relations prior to any application for relief, it was in one case found that they must be held to have been made *ex pietate*, and cannot be claimed from the parish of the pauper's settlement;[4] but, in a later case where a bastard was supported by its mother with the assistance of her friends, aliment was awarded from the birth of the child, although no application for relief was made to the parish for two years thereafter, and although no claim for repetition was made on the part of her friends.[5] Parishes and individuals having maintained paupers whom they were not bound in law to maintain, are entitled to pursue the parish of their settlement, to the further effect of having it declared liable in their future support.[6]

An action was in one case sustained by a parish in which

[1] Dalry, Nov. 17, 1791, (M. 14557.) This case had reference to a mortified fund, of which the heritors and kirk session had assumed the management, on the failure of the nominated trustees. The same principle, however, would hold in reference to the ordinary parochial funds.

[2] 1579, c. 74.—1617, c. 10.—Proclamation, 29th August, 1698.

[3] Rescobie, Nov. 28, 1801, (M. 10589.) Howie, January 25, 1800, (M. Ap. Poor, 1.)

[4] Howie, ut supra.

[5] Robert, Feb. 5, 1825, (3 Shaw and Dunlop, 348.)

[6] Howie, ut supra.

a pauper was resident, against that of his legal settlement, to have the latter declared liable to support him, although no aliment had been advanced by the parish pursuing the action, and no claim made on it.[1] But, in a later case, the Court found, that a parish, against which no claim had been made for the support of a bastard child born in the parish, had no title to pursue an action against the father, concluding to have him found liable in the maintenance of his child;[2] and, on the same principle, it must now be held, that a parish in such circumstances has no title to pursue an action against the parish of the settlement of a poor person whom they merely suspect to be likely to become an object of parochial relief.

105. By the 6th Geo. IV. c. 27. it is declared lawful for the heritors and kirk session of any parish to advance to any army or navy pensioner a weekly sum not exceeding the rate of his pension, to be repaid out of the next quarterly or other payment, and to take an assignment therefor,[3] in virtue of which they may obtain payment of the pension when it falls due, it being provided, however, that no such assignment shall entitle the heritors and kirk session to receive any payment if the pensioner shall die before the time when it would have become payable to him. The payments so drawn by the heritors and kirk session are to be applied to their reimbursement, and the residue to be accounted for by them to the pensioner; and if any disputes shall arise as to this accounting, it is declared that they shall be determined summarily by a Justice of the Peace, whose decision shall be final and conclusive.

It is further provided, by the same statute, that if any pensioner shall leave his wife and family chargeable to a parish, it shall be lawful for any two Justices to direct, by order un-

[1] Hutton, Dec. 6, 1770, (M. 10575.)

[2] Garvald, Feb. 14, 1817, (F. C.)

[3] The prescribed form of such an assignment will be found in the Appendix, No. IX.

der their hand, payment of the allowance next falling due to be made to the heritors and kirk session, who shall be entitled to receive the same, on proof that the pensioner was alive when it became due; and the allowances so received, the heritors and kirk session shall apply to the indemnity of the parish, paying the surplus, if any, to the pensioner.

106. In a case where, on grounds of public police, the Procurator-fiscal of the Sheriff Court had taken up and supported an idiot in a lunatic asylum, he was found entitled to be reimbursed by the parish where the idiot was apprehended, though it was not that of his settlement, and although no previous application had been made.[1] It was declared, however, that the parish might place the idiot where he could be supported at least expense, provided the Procurator-fiscal was satisfied of the security of the custody.

[1] Scot, Nov. 13, 1818, (F. C.)

CHAPTER V.

OF THE FUNDS FOR SUPPLYING RELIEF.

The funds out of which the poor are to be supported, may be divided into two classes:—1. Those arising from voluntary contributions, mortifications, mortcloth dues, and such like sources,—and, 2. Those levied by assessment.

SECTION 1.

Of voluntary Contributions, Mortifications, &c.

107. In the greater number of parishes in Scotland, the principal fund for the support of the poor consists solely in the contributions made at parish churches.

The collections received at dissenting meeting-houses do not form part of the poor's funds, but are at the sole disposal of the congregation by whom they are supplied.[1]

It would rather seem, however, that contributions collected at chapels of ease ought to be thrown into the general parochial fund, although, perhaps, the heritors and kirk session may leave the distribution of such sums to the minister and elders of the chapel.

If such collections are to be held in law as forming part

[1] Hill, June 19, 1739. (M. 8011.)

of the parochial fund, it is evident that no clause relative to them, introduced into constitutions of chapels of ease, and approved by the General Assembly, can have the effect of depriving the heritors and kirk session of their legal claim to them.

108. The proclamation, 29th August, 1693, ordains that one half only of the sums collected at parish churches, and of the dues received by the kirk session, shall be paid over by them into the general fund for the support of the poor.

No directions, however, are given as to objects to which the remaining half, left at the disposal of the kirk session alone, is to be applied. In general practice, the purpose to which this fund has been applied, is to grant temporary relief out of it, in cases of sudden distress, and during the period which must elapse before admission to the permanent roll of poor; and such appears to be the true object of leaving it at the immediate disposal of the kirk session, who must, however, account for their management of it; and any single heritor is entitled to call them to account.[1]

It has also been thought, that the expense of communion forms, tables, and cloths, preaching tents, beadle and session-clerk salaries, and other such matters, was intended to be defrayed out of this half of the collections. In the only case which has occurred relative to these matters, a distinction was made between some of the articles above mentioned.[2] This was in an action at the instance of an heritor against the kirk session, to compel them to account for their management of the poor's funds. Among the articles for which the kirk session took credit, were, 1. A new tent for field preachings, and repairing the same. 2. Communion forms, tables, and table-cloths. 3. Rent for a preaching-field. 4. Constables to keep the peace at a sacrament. 5. Damage done to an heritor's dyke adjacent to the preaching-field on the same occasion.

[1] Hamilton, Nov. 23, 1752. (M. 10570.)

[2] Ibid.

6. Fees to the presbytery clerk; and, 7. Session-clerk's salary.

Of these the Court sustained, as proper charges against the funds, those for the field-tent and the session-clerk's salary, and repelled all the others.

The report does not state on what principle the charge for the tent was sustained, while that for communion forms, tables, and cloths was repelled; but it may perhaps have arisen from this, that by the act 1617, c. 6, the parishioners are ordained to tax themselves for providing basins for the administration of baptism, and cups, tables, and table-cloths, for the communion, while, so far as I am aware, there is no provision anywhere for furnishing a preaching tent.

109. The dues received for the use of hearses and mortcloths, form part of the poor's fund. The kirk session may acquire, by immemorial usage, the exclusive privilege of letting hearses and mortcloths out to hire.[1] Private societies, however, may obtain a joint right to this privilege, by prescriptive possession.[2]

It has been found, that when the sacrament is not administered, the sums allotted for providing communion elements, which have not been paid to the minister, must be paid into the poor's fund;[3] but, if paid, an action of repetition will not lie.[4]

Kirk sessions are not entitled to exact dues for behoof of the poor, on proclamation of banns of marriage.[5]

110. By act of Parliament 1621, c. 14, it is declared, that if any sums of money above 100 merks shall be won, within any 24 hours, at cards or dice, or by wagers at horse races, the surplus (above the 100 merks) shall belong to the poor of the parish where 'such winning fell out.' Power is given

[1] Turnbull, August 10, 1756, (M. 8013,) and Kilwinning, 1718, cited there.
[2] Dumfries, February 18, 1783. (M. 8018.)
[3] Birnie, Nov. 29, 1678, (M. 2489.) Heritors of Abdie, July 21, 1713, (M. 2492.)
[4] Hay, July 14, 1780, (M. 2492.)
[5] Beveridge, June 26, 1765. (M. 8014.)

by the act to magistrates of burghs, sheriffs, and justices of peace in the country, to 'pursue and conveen' all persons winning such sums; and if, on information given them, they refuse to do so, they are declared liable to a penalty of double the winning, recoverable by action at instance of the informer, one half to be given to the poor, and the other to the informer.

This act is still in force, and has been held to extend to all game debts.[1] In the case of a horse race, the parish where the wager was laid, and the race begun, was held to be that where the winning fell out, and entitled to the money, although it was determined in another parish.[2]

The heritors and kirk session, or their treasurer or collector, are entitled to sue for such sums.[3]

Although the sum be contained in a bond, it is competent to lead evidence to show that it was granted for a game debt.[4]

The act cannot be evaded by paying the debt, and receiving the amount back as in loan, for which a bond is given.[5]

111. A variety of fines imposed by special statutes for offences against the peace, &c. are declared to belong in whole, or in part, to the poor; as the penalties for resetting vagabonds, by 1579, c. 74; giving alms to beggars not in their own parish; the several penalties on parishes for neglecting to obey the laws for the support of the poor, and on inhabitants for refusing to pay their quota, by proclamation, 11th August, 1692; for irregular and clandestine marriages, by 1661, c. 34—1698, c. 6; acting plays without license, by 10 Geo. II. c. 28; and several others.

[1] Straiton, July 19, 1688. (M. 9506.) Park, Nov. 12, 1668. (M. 3459.) Maxwell, July 14, 1774. (M. 9522.) Dumfries, June 15, 1775. (M. 16580.)

[2] Dumfries, February 18, 1783. (M. 8018.)

[3] Hill, February 9, 1711. (M. 10551.)

[4] Straiton, July 19, 1688. (M. 9506.) Hill, *ut supra.*

[5] Straiton, *ut supra.*

112. It has been determined that the poor have no right to glean.[1]

113. Considerable funds have been mortified for the support of the poor in many parishes.

When mortifications are made for behoof of the poor generally, and the management is not intrusted to particular individuals, or when it is given to 'the patrons or overseers' of the poor, they fall under the administration of the heritors and kirk session, in the same way as the ordinary fund for support of the poor, each member of the meeting having a vote; and this whether the benefit of the fund extend to the whole parish, or only to a particular district of it.[2]

Those persons, and those only, who are entitled to relief out of the ordinary parochial funds, can claim the benefit of mortifications for behoof of the poor generally.

114. By the Act 1633, c. 6, it is declared unlawful to 'alter, change, or invert' any mortifications for support of schools and hospitals, or pious purposes, 'to any other use 'than that specific use whereunto they are destinate by the 'disponer himself.'

It has been found, that turning a mortification for supporting a woollen manufactory for the employment of idle boys into a linen manufactory, but still for the same purpose, was not an inversion of the use of it.[3]

The managers of a mortification may set tacks, or feu out mortified lands, when for the advantage of the fund.[4]

It has also been found, that they are entitled to sell the superiority of mortified lands for a fair price;[5] but they have no power gratuitously to alienate such superiority.[6]

[1] Wilson, 1771. (M'Laurin, 744.)

[2] Humbie, February 15, 1751. (M. 10555.) E. of Galloway, &c. February 22, 1810. (F. C.) Cardross, 1789, there cited; a full account of this case will be found in the papers of that of E. of Galloway, &c.

[3] Edinburgh, Nov. 22, 1698. (M. 9107-9.)

[4] Ibid.

[5] Moore's Trustees, June 25, 1814. (F. C.)

[6] Christie, &c. July 6, 1774. (M. 5755.)

Where land had been left for the support of a definite number of persons, it was found, that, on the rents increasing beyond what was necessary for this purpose, the surplus accrued to the heirs of the donor.[1]

115. In the event of the managers of mortifications misapplying the fund, the Act 1633, c. 6, gives right of action for calling them to account, and compelling them to apply the fund to the right use, to 'the kirkes, schools, and others,' for whose behoof they were made, or to 'the bishops and 'ordinaries within the dioceses where the said kirkes, schools, &c. lye.' Any power possessed by these ecclesiastical authorities, might probably now be held to be vested in the presbyteries.

Action for maladministration against the managers of George Heriot's hospital, instituted for the education of 'poor 'fatherless boys, the sons of freemen and burgesses of the 'city of Edinburgh,' was sustained at the instance of the Merchants' Company, and incorporations of the city.[2]

In like manner, a similar action was sustained at the instance of certain guild-brethren and burgesses of Stirling against the magistrates, as managers of an hospital for the support of twelve decayed 'guild-brethren.'[3] In the same case, the Court also sustained the title of an heir of the donor to pursue such an action, and in general it may be laid down in the words of a learned judge, in a case quoted below, 'that persons managing such funds are accountable to any 'one having a proper interest in the charity.'

[1] Hospital of Perth, May 20, 1795. (M. 5753.)

[2] Merchants' Company and Trades of Edinburgh, August 9, 1765. (M. 5750.)

[3] Christie, July 6, 1774. (M. 5755.) Their title to pursue was again sustained in the subsequent case of Row, &c. Dec. 6, 1825, (4 Shaw and Dunlop, 207,) where it was observed from the bench:—'The real interest under the trust is 'vested in the Guildry alone, and any one individual guild-brother libelling a 'proper summons of mismanagement, has, without authority of the corporation, sufficient title to make the patrons account for their administration; and 'it is of great importance that it should be known throughout the country, that 'persons managing such funds are accountable to every one having a proper interest in the charity.'

Where the managers of an hospital or mortified fund change, as where it is intrusted to the magistrates of a burgh, any set of administrators may call their predecessors to account for their management.[1]

And any individual manager may call his brethren to account for acts of malversation.[2]

Persons entitled to benefit under a deed of mortification, have also a right to pursue an action for enforcing their claims.[3] This was also allowed in reference to the charitable fund of an incorporation.[4]

116. By acts 1457, c. 69, and 1503, c. 10, power is given to the chancellor, or his deputies, with the ordinary of the diocese, to inspect the infeftments and foundations of hospitals, and cause them to be employed in terms thereof; and when these are lost, to be applied to the support of 'pure 'and miserabil persones.'

This power is renewed by several subsequent statutes, and is also conferred on the King, or visiters to be appointed by him.[5]

117. The jurisdiction of the Court of Session extends over hospitals and mortifications, so as to entitle them to control the management of the administrators.[6]

In the event of a failure of the administrators in whom the management of a mortification for a definite purpose is vested, it has been found that the Court of Session may supply the deficiency by a new nomination. Thus in a case where

[1] Magistrates of Edinburgh, Nov. 22, 1698. (M. 9107.)

[2] M'Ausland, January 16, 1793. (M. 2010.)

[3] Merchants' Company and Trades of Edinburgh, August 9, 1765. (M. 5750.)

[4] Paterson, February 10, 1803, (M. Ap. Aliment, 6.) The claims of the pursuers here were, however, repelled.

[5] 1540, c. 101.—1578, c. 68.—1696, c. 29.—1698, c. 21.

[6] Merchants' Company and Trades of Edinburgh, *ut supra*, 3. In the several other cases quoted above, the jurisdiction of the Court of Session was not disputed.

a mortification for the endowment of parochial schools, was vested in five trustees, and their successors in their estates, the major part of whom were declared to be a quorum; three of those named having refused to accept, the Court, in a question, with the heir of the donor, found, 'that the mortifi-'cation does not fall nor become void, through the failure or 'repudiation of the majority of the trustees, and that al-'though there should be only one of them surviving, and not 'renouncing, he may accept, and is entitled to act; and fur-'ther, that the said mortification does not fall, even by the 'failure and renunciation of the whole trustees, but that, in 'that case, it is competent to this Court to nominate and ap-'point such person or persons as they should think fit, for 'carrying the said deed into execution.'[1]

When, however, the fund was for the benefit of the donor's descendants only, and the trustees had a discretionary power as to the carrying the trust into execution, the Court refused to supply a total failure of the persons nominated, and found that the donation had lapsed.[2]

118. Incorporations have generally a fund, raised by the contributions of the members, for the support of their poor. In the management of this fund, they are subject to the control of the Court of Session,[3] who will not, however, interfere with their determination as to claims for relief,[4] unless where these are fixed by general regulations of the incorporation.[5] It would also seem, that incorporations are not subject to the control of any inferior judicature, except in this last case, where, from the existence of such regulations, members entering the incorporation may be held to have acquired, by contract, a claim to the fixed rate of relief.[6]

[1] Campbell, June 26, 1752. (M. 7440.)
[2] Dick, January 22, 1758. (M. 7446.)
[3] M'Ausland, January 16, 1793. (M. 2010.)
[4] Paterson, February 10, 1803. (M. Ap. Aliment, 6.)
[5] Scotland, January 31, 1826. (4 Shaw and Dunlop, 275.)
[6] Ibid.

he incorporation has a title to pursue ac-
corporation for malversation of the fund;[1]
sons for whose behoof the fund was creat-
an action for the establishment of his

or friendly societies afford very admirable
means ing for poverty, by a system of mutual as-
surance. They are regulated by the statutes of Geo. III. 33, c. 54:—35, c. 3:—43, c. 3:—49, c. 125:—57, c. 39, and 59, c. 128.[3]

SECTION 2.

Of Assessment.

120. By the act 1579, c. 74, power is given to the magistrates in burghs, and justices constitute by the King's commission in landward parishes, 'by the gude discretions of the 'saidis provests, &c. and sik as they sall call to them to that 'effect, to taxe and stent the haill inhabitants within the 'parochin, according to the estimation of their substance, 'without exception of persones, to sik weekly charge and con-'tribution as sall be thocht expedient and sufficient to sus-'teine the saidis pure peopil.'

The proclamation, 11th August, 1692, requires the heritors and kirk session of every parish to 'make lists of all the 'poor within their parish, and to cast up quota of what may 'entertain them according to their respective need, and to 'cast the said quota, the one-half upon the heritors, and

[1] M'Ausland, Jan. 16, 1793. (M. 2010)

[2] Paterson, Feb. 10. 1803. (M. Ap. Aliment, 6.)

[3] A very admirable report on the subject of these societies, has been published by the Highland Society of Scotland. It contains a great deal of information, and many tables which might be of great importance and utility in the establishment of these excellent institutions. Very valuable tables, &c. have also been lately published by order of the House of Commons.

'the other half upon the householders of the parish.' The heritors of vacant parishes were, in the same manner, required to impose assessments, by the proclamation, 11th August, 1693, which also commanded the magistrates of royal burghs 'to stent themselves conform to such order and custom used 'and wont, in laying on stents, annuities, or other public 'burdens, as may be most effectual to reach all the inhabi-'tants.'

WHO MAY IMPOSE ASSESSMENTS.

121. The power of imposing, apportioning, and levying an assessment, belongs solely to the magistrates in burghs, and, in parishes to landward, to the heritors and kirk sessions, who were substituted in the place of the justices nominated by the king's commission, on whom this power was originally conferred.[1]

If landward parishes be vacant, the heritors alone may exercise this power.[2]

The magistrates, and the heritors and kirk sessions, are entitled to call to their assistance in imposing the assessment, such of the inhabitants as they may consider best qualified for that duty.

122. Burghs of barony and regality fall under the class of landward parishes, royal burghs alone being comprehended under the other class.[3]

123. Any regular meeting of the board of heritors and kirk session may impose an assessment, though no heritor be present, though the minister be absent, or though heritors only be present. (See infra, 179.)

[1] 1579, c. 74.—1592, c. 149.—1597, c. 272.—1600. c. 19.

[2] Proclamation, 29th August, 1693.

[3] So it was held in the case of Gammell, 1822, where the point was discussed on memorials, as to the parish of Greenock, which contains two burghs of barony. A report of this case, which was settled by compromise before all the points which occurred in it were determined, will be found in the Appendix, No. X.

When a part of a parish is disjoined, or annexed *quoad sacra* merely, an assessment can only be imposed by the heritors and kirk session of the parish to which this portion is attached *quoad civilia*, and for the support of the poor of that parish only.[1]

ASSESSMENT IN LANDWARD PARISHES.

1. *On Heritors.*

124. Under the act 1579, every inhabitant of a parish is liable in a share of assessment proportionate to the amount of his property of every description; but the proclamation 11th August 1692, adopting the rule established by the Act 1663, c. 16, in regard to assessments for the employment of vagabonds, divides the assessment in landward parishes into two parts, laying one half on the heritors, and the other on the householders. It does not require that the heritors, in order to be subject to assessment, should also be inhabitants; and it is quite settled in practice, that heritors are liable in an assessment for the support of the poor of the parish where their property lies, although they be not inhabitants of the parish, and that they are not liable in respect of such property in any other parish.

By the act 1663, c. 16, it is declared, in reference to assessments for the employment of vagabonds, that wadsetters and liferenters shall be liable as heritors during their possession; and although that act does not apply to assessments for the support of the ordinary poor, and is in desuetude, (see supra, 10,) yet in reference to such assessments, the rule has now become fixed by practice. Such persons are also liable in assessment, though not inhabitants of the parish.

125. Assessments may be imposed in respect of all landed property in Scotland, with only two exceptions.

[1] Gammell, Nov. 26, 1816, (not reported.) Thomson, Nov. 17, 1808. (F. C.)

(1.) King's property is not liable to this burden. This rule does not hold, however, where it is the subject of a beneficiary possession by any of the lieges. Thus the heritable keeper of the King's Park of Holyrood House, has always paid poor's-rates to the parish of Canongate. And when, on one occasion, he disputed his liability, the Lord Ordinary decerned against him, and he acquiesced in his Lordship's judgment.[1]

Nor does the rule obtain, in reference to property acquired by the Crown from a subject, whether previously to the acquisition it had actually been subjected to the payment of poor's-rate or not. Such property continues liable in its rateable proportion of assessment, though used for public purposes.[2]

But in estimating the value of such property, so as to determine the proportion of rate to be laid on it, buildings or ameliorations made for the public service cannot be taken into view.[3]

126. (2.) The other exception from the universal liability of landed property to assessment for poor's-rate, is in regard to the manse and glebe of the clergyman;[4] and it would seem, on the same principle, in regard also to the church and churchyard—the parochial school-house—poor's-rates, and mortifications not beneficially occupied by others, but only by the poor.

In England no rate can be imposed on dissenting meeting-houses, unless where a rent is raised by letting the pews. But that proceeds on the rule of the English law, that no rate is

[1] Canongate *v.* Lord Haddington, 1816. The Court sanctioned the same principle, in reference to an assessment for building a manse, Ross *v.* Lord Haddington, June 8, 1824. (3 Shaw and Dunlop, 81.) This is also the law of England. Rex *v.* Hurdis, 3 T. R. 407.

[2] Milroy, Nov. 21, 1815. (F. C.) Officers of Ordnance, June 14, 1825. (4 S. and D. 73.) A similar judgment was given, in reference to the land-tax and other public burdens, in Bruce, Nov. 26, 1810. (F. C.)

[3] Ibid.

[4] Cargill, Feb. 29, 1816, (F. C.)

leviable on proprietors merely, but only on occupiers enjoying a beneficiary occupation. It seems doubtful how far the same would hold in Scotland, where proprietors are directly liable, not in respect of their occupancy merely, but of their property. Undoubtedly, so far as they are a source of profit to the proprietors, they would be liable in a share of the assessment with us as in England.

127. No dispute appears ever to have arisen as to the liability of any other real property, with the exception of a single case relative to mills, coal-works, and salt-works, which were found equally subject to this burden, with all other real property.[1]

128. In apportioning the half of the assessment leviable from the heritors, on the several individuals liable therein, in proportion to their several properties, the heritors and kirk session may, at their discretion, adopt either the real or the valued rent of the property as the rule of apportionment.[2] The former is the rule generally adopted, and it is undoubtedly the most equitable. Whichever will be taken, however, it must be applied equally to all the heritors of the parish.[3]

It is customary when the real rent is taken as the rule for apportioning the assessment, to allow proprietors of houses a deduction of a certain per-centage for repairs. In one case where the assessment was sanctioned by the Court, a deduction of one-fourth of the rent was allowed:[4] no objection, however, was taken to this deduction, which certainly seems to be a very large allowance for repairs.

129. In a case where the heritors and kirk session had exempted entirely from assessment the proprietors of houses of less than £6 of yearly rent, it was found by the Lord Ordinary that this exemption did not warrant the interference of

[1] Invereak, May 28, 1794. (M. 10585.)
[2] Scot, Jan. 19, 1773. (M. 10577.)
[3] Cargill, February 29, 1816. (F. C.)
[4] Scot, ut supra.

the Court, at least in the form of a suspension, at the instance of an individual heritor. His Lordship's judgment was not expressly adhered to, the case having been settled by the acquiescence of the party objecting, but the Court did not express a different opinion.[1] This, however, does not go to establish a right of exemption on such proprietors, but only the power of the heritors and kirk session to grant it when they see cause.

2. *On Inhabitants or Householders.*

130. By the act 1579, c. 74, the 'haill inhabitants' of every parish, 'without exception of persones,' were made liable in assessment for the poor. The proclamation, 11th August 1692, which, as already mentioned, divides the assessment in landward parishes into two parts, and lays one-half on the heritors, uses merely the term 'householders' in regard to the class on whom it imposes the other half. This provision of the proclamation has evidently reference to the rule adopted in the act 1663, c. 16, as to the assessment for the employment of vagabonds; and that statute, in one part of it, lays this half on the 'tenants and possessors.' In another part of the same statute, however, the persons made liable in this half of the assessment are declared to be 'the possessors and inhabitants dwelling upon the ground of each heritor respective;' and, besides, the proclamation can scarcely be understood to have repealed the prior Act of Parliament 1579, to the effect of exempting any persons or property formerly liable under that statute; and as it expressly declares, that the assessment shall be imposed on 'the haill inhabitants within the parochin, according to the estimation of their substance, without exception of persons,' it would rather appear, that an 'inhabitant' of a landward parish possessed of personal

[1] Gammell *v.* Assessors of Greenock, 1822, App. No. X.

estate, is liable in his proportion of assessment, although he may not be, strictly speaking, a 'householder' in terms of the proclamations, or a 'tenant or possessor' under one of the clauses of the act 1663.

131. The only decision in regard to the question, who are to be considered inhabitants in reference to an assessment for the poor, was that pronounced in a late case[1] regarding burghs, where it was found, that a burgess, having a place of business within the burgh where he attended daily for the greater part of the year, but having his residence with his family in an adjoining landward parish, was to be considered as an inhabitant of the burgh to the effect of subjecting him in assessment. It does not, however, follow as a necessary consequence of this decision, that a person, having a place of business, which he, in like manner, attends in a landward parish, but having his residence elsewhere, would be considered as an inhabitant of the landward parish; for the judgment alluded to proceeded, in a great measure, on the terms of the proclamation 29th August 1693, which is applicable to royal burghs only, and empowers the magistrates 'to stent themselves conform to such 'order and custom used and wonted in laying on stents, an-'nuities, and other public burdens in the respective burgh, 'as may be most effectual to reach all the inhabitants.' Under this authority it was considered, that the party in the case referred to was liable in assessment for the poor, as he was confessedly liable in the payment of stent, and as persons in his situation had been long in use by the custom of the burgh to be assessed for the poor. It is no doubt true, that a great deal of the general argument resorted to in this case, in regard to the meaning of the term 'inhabitant,' would apply equally to the case of landward parishes as to that of burghs, but the decision cannot be considered as absolutely settling the meaning of the term 'in-

[1] Buchanan, Feb. 21, 1827, (5 Shaw and Dunlop, 230.)

'habitant' in landward parishes; and it can scarcely be said, that a person, having merely a place of business in a parish, can be held to be a 'householder' under the proclamation 11th August, 1692. In England, where questions have occurred as to the meaning of the term 'householder,' under the 43d of Elizabeth, regarding the poor, it appears to be held, that the possession of a dwelling-house is necessary to constitute a householder; but although the party do not personally dwell in the house, if he pay the taxes, &c. and if it be occupied by a clerk, servant, or the like, rent-free, and if he attend there daily for the purposes of business, he will be deemed a resident householder under the statute; and even if the house thus occupied be possessed by the partners of a firm, who attend in like manner for purposes of business, they will all be held to have the character of householders.[1]

132. The act 1663, c. 16, lays on the 'tenants and possessors' one-half of the assessment, thereby authorized for the employment of vagabonds. But it is doubtful whether it would be competent to assess, for the support of the ordinary poor, a tenant who is not also a householder or inhabitant of the parish, as he neither comes within the words of the proclamation 1692, nor of the act 1579.

133. The proclamation, 11th August, 1692, prescribes no rule for apportioning the assessment on the class of householders or inhabitants, and it has been matter of dispute whether they are liable to be assessed in respect of their means and substance, or whether they can only be made liable in respect of the heritable property occupied by them within the parish, and for the corresponding half of the assessment imposed on the respective proprietors of the property they thus occupy. On the one hand it is contended, that, by the proclamation, 11th August 1692, it was meant to adopt exactly, or to revive in reference to the ordinary poor, the plan of assessment authorized for the employment of vagabonds by

[1] Rex v. Poynder, 1 B. and C. 678.

the act 1663, c. 16. And it is said that, from the terms of that statute, it is clear, that a certain proportion of the assessment was to be laid on each property, the one-half of it to be paid by the heritor, and the other half by the tenants and possessors dwelling on his lands; thus, in fact, just giving each heritor relief from his own tenants of one-half the share of assessment corresponding to the real or valued rent of his property, and that it was only when the tenants and possessors on each particular estate came to apportion their half of the share leviable in respect of that estate among themselves, that the means and substance of each were to be taken into view. From this the conclusion is drawn, that no person can be assessed among the class of householders or inhabitants but the occupiers of heritable property; and that, in apportioning the assessment on such occupiers, nothing farther can be laid on them than the half corresponding to what has been imposed on the heritor, according to the real or valued rent of the land; and if there are more tenants than one on an estate, that this half must be apportioned among them according to their means and substance, which, it is maintained, has been determined by usage to be the profits of their respective farms, to be judged of by the rent.

On the other hand, it is argued, that the proclamation 1692, although it has borrowed from the act 1663 the rule of dividing the assessment for the ordinary poor into two parts, has not adopted to its full extent the exact plan of assessment contained in that statute; but, on the contrary, has only declared, in general terms, that the one half of the assessment shall be laid 'upon the heritors, and the 'other half upon the householders of the parish,' instead of following the phraseology of the act 1663, which appoints the one-half of the money for the employment of vagabonds, 'to be paid by the heritors of the several paroches *respective*, 'and the other half thereof to be paid by the possessors and 'inhabitants dwelling on the ground of each heritor *respective*;'

or (as it is expressed in another part of the statute, where the assessment is authorized to be levied,) 'the one-half thereof 'to be payed by the heritors, either conform to the old ex- 'tent of their lands within the parish, or conform to the val- 'uation by which they last payed assessment, or otherwise, 'as the major part of the heritors so meeting shall agree, 'and the other half to be laid on the tenants and possessors, 'according to their means and substance.' From this difference between the proclamation and the act 1663, it must be inferred, it is said, that it was not intended to adopt implicitly the plan of the statute; and it is further argued, that, as the proclamation fixes no specific rule, recourse ought to be had to the previously existing law relative to the ordinary poor—that this was the statute 1579, c. 74, which directs the assessment for support of the poor to be levied from the 'haill inhabitants within the parochine, according to the es- 'timation of their substance, without exception of persons;' and which clearly intends that the assessment shall be apportioned in respect of the general estate and property of the individuals, both from the obvious meaning of the words used, and from the subsequent provision that the stent roll be renewed each year, 'for the alteration that may be through death, or 'be incres or diminution of men's gudes and substance.' This act 1579, it is observed, made all the inhabitants of a parish liable for the support of the poor, in respect of their whole property, heritable and moveable; and it was expressly revived by the statute 1698, c. 21, our last enactment relative to the poor, and subsequent to the date of the proclamation ratified in the same statute; and although the proclamation has so far introduced a different rule as to separate the general assessment into two parts, and lay one on the heritors, and the other on the inhabitants, it cannot be held—even if the full power of an Act of Parliament be given it—to have effected a greater alteration on the previous law than its terms expressly bear, or to have repealed the Act of Parliament

merely by presumption, to the effect of relieving personal estate in respect of which the inhabitants were previously liable.

Finally, it is contended, that even under the statute 1663 itself, it is very doubtful whether the direction to lay the one-half on the heritors, and the other on 'the tenants and possessors, according to their means and substance,' would not warrant (notwithstanding the other expressions in the act,) the one half of the whole assessment to be laid on the tenants and possessors of the parish generally, according to the means and substance of each; and as to the alleged practice that there has been no such general or uniform practice throughout the landward parishes of Scotland, as to have any weight in determining this question.

134. The case of Gammell[1] was the first in which a decision was pronounced on this point. An heritor in the united parishes of Greenock, who entirely occupied his own land, but was also possessed of large personal funds, was assessed first as an heritor in a share of the half laid on heritors, proportioned to the rent of his heritable property; and secondly, as an inhabitant or householder, in a share of the other half, effeiring to the estimated amount of his whole personal estate, wherever situated. Against the assessment imposed on him in this latter character, he brought a suspension, in which several points were involved, and, among others, this question, Whether, supposing him liable to be assessed in the double character of heritor and householder, the assessment imposed on him as a householder, could be laid on in proportion to his means and substance or personal estate, or merely in proportion to the rent of the heritable property occupied by him within the parish?—The Court (Second Division) found

[1] This case was settled before all the questions in it were finally decided, and so it is not reported in either of the ordinary collections; but a short account of it, together with the notes of the opinions of the Judges, taken by the author, who was one of the counsel in the cause, will be found in the Appendix, No. X.

that he was liable to be assessed as a householder 'on his 'means and substance;' but appointed a condescendence as to the practice on the point, whether his whole means and substance, wherever situated, was to be taken as the rule of assessment, or merely his means and substance within the parish.—The case never again came before the Court, in consequence of the party agreeing to pay the assessment as imposed on him by the heritors and kirk session.

The question was again tried in the case of Cochrane *v.* Manson,[1] which came before the First Division of the Court; and their Lordships unanimously found that the party complaining there, who was an heritor occupying his own property, (which was of small extent,) and possessed of extensive personal estate, was liable to be assessed as an heritor in respect of his land, and as a householder or inhabitant, on his whole means and substance, or personal estate, wherever situated.[2]

Under the authority of these decisions, therefore, it may be laid down, that the legal rule for apportioning the half of the assessment leviable from the class of inhabitants or householders in landward parishes, is, that they shall be rated in proportion to the amount of means and substance, belonging to each inhabitant respectively.

135. In estimating the amount of each individual's means and substance however, the heritors and kirk sessions may adopt some such determinate data as the rents of the farms or houses possessed by them, or they may proceed directly by an estimate of their means and substance, made 'be the gude discretionis' of them, and such inhabitants as they may call to assist them;[3] but whichever rule be adopted, it must

[1] Feb. 11, 1823. (2. Shaw & Dunlop, 183.)

[2] This had previously been determined in regard to the inhabitants of burghs. Laurie, Dec. 2, 1797, (M. 10587.) Ross, Dec. 16, 1800, (M. Ap. Poor 3.)

[3] 1579, c. 74. Gammell, May 31, 1822, Ap. No. X. Cochrane, Feb. 11, 1823. (2. Shaw and Dunlop, 183.)

be applied equally to all the inhabitants in the parish; it being incompetent to assess one man according to direct estimate of his wealth, and another according to the amount of his rent.[1]

136. When a direct estimate is resorted to, the assessors are entitled to include the whole means and substance of every description, (except landed property in Scotland, in respect of which, the proprietor is liable to be assessed in the other character of heritor,) and wherever situated,—as stock in the public funds—money lent, whether on personal or real security—tacks of lands—ships—stock in trade—in public companies, or the like. It has never been decided whether professional men and artisans are liable to be assessed, in respect of income arising from their trade or profession. In practice, however, such persons have always been assessed along with the other inhabitants, and the practice seems to accord with the spirit and just construction of the Act of Parliament.

137. In a case relating to the assessment in a royal burgh,[2] the Court, while they sustained the power of the assessors to make a direct estimate of the means and substance of the inhabitants, intimated an opinion, that the plan of adopting the rents of the heritable property possessed by each person as the criterion of his wealth, was the preferable mode. This course, however, can only be followed with propriety where the parish is exclusively town, or exclusively landward. For where the inhabitants consist partly of farmers, and partly of merchants or manufacturers residing in towns or villages, if the rent of the real property occupied by each be taken as the criterion of his wealth, the farmer who pays a large rent for his farm, will be most unequally burdened in comparison with the opulent merchant, who only occupies a house in the town or village. In such cases, if rent be taken as the criterion, it rather ought, in point of expediency, to be the rent of such property only as

[1] Cargill, Feb. 29, 1816. (F. C.)
[2] Laurie, Dec. 2, 1797. (M. 10587.)

is possessed merely for residence or luxury. Where the inhabitants are all farmers, or all residents of a town, the rents of their possessions may form data sufficiently correct for estimating their respective wealth. Yet, even in this case, shop-keepers must bear an undue proportion of assessment, compared with the other inhabitants.

138. It has been found, that the same individual may be assessed as an inhabitant both of a landward parish and of a burgh,[1] and it might perhaps be in like manner held in certain circumstances, that he was liable to be assessed as an inhabitant of more than one landward parish. In such circumstances, the question would arise whether he was liable in each, in respect of his whole means and substance. In the report of the case of Cochrane *v.* Manson,[2] already referred to, the Court are said to have expressed an opinion, that if an inhabitant of a landward parish, assessed on his means and substance, 'possessed property in any other parish 'on which he was liable to be assessed, he would be entitled 'to a corresponding deduction.' But in the later case of Buchanan *v.* Parker,[3] the learned Judge who delivered the opinion of the majority of the whole Court, stated, that though an inhabitant of a burgh, in virtue of the Act 1597, c. 280, would be entitled to relief to the extent of his living outwith the burgh, this would not be competent to a person assessed as an inhabitant of more than one landward parish, who would accordingly be liable to be assessed in each, in respect of his whole means and substance wherever situated.

139. If an heritor, living in the parish, be in the natural possession of his own lands, or be possessed of separate estate other than land, he is liable in a rateable proportion of the

[1] Buchanan, Nov. 22, 1798. (Not reported.—Noticed in Hutchison, ii. 47.) Buchanan, Feb. 21, 1827. (5. Shaw and Dunlop. 290.)

[2] Feb. 14, 1823. (2 S. & D. 183.)

[3] February 21, 1827. (5. S. & D. 290.)

half laid on the inhabitants or householders, as well as in a share of the half laid on the heritors[1]

In the case of Cochrane here quoted, the court sustained an assessment imposed on an heritor who was also an inhabitant, and occupied his own lands, and was possessed of considerable personal estate, in the three different characters of heritor, tenant, and inhabitant, laying a separate rate on him for each; but lately, when that case was alluded to from the bench, it seemed to be generally admitted that, to this extent, the decision was erroneous; and that, although the rents of a tenant's farm may be taken into consideration along with his other means and substance, he cannot be assessed separately on the rent of his farm as a tenant, and on his means and substance as an inhabitant.

If an heritor be not an inhabitant of the parish where his land is situated, the circumstance of his possessing his own lands will properly be taken into view in valuing the means and substance, in respect of which he is to be assessed in the parish where he is an inhabitant.

140. Clergymen are not liable to be assessed as such, on the amount of their stipend, or in respect of their possession of their glebe.[2] If they have any other estate, they are, of course, liable in respect of it as any other inhabitant.

It should rather seem, that, on the same principle, parochial schoolmasters ought not to be assessed on their salary as schoolmasters.

141. In a suspension of a charge for assessment, on this ground, among others, that all inhabitants whose income was under £40 yearly, had been exempted, the Lord Ordinary (Lord Cringletie) found, that this exemption did not warrant the interference of the Court. The Judges of the Inner-house did not dissent from his Lordship's opinion, al-

[1] Gammell, May 31, 1822, App. No. X. Cochrane, Feb. 11, 1823, (2. Shaw and Dunlop, 183.)

[2] Cargill, Feb. 29, 1816. (F.C.)

though from the case having been settled, no decision was pronounced on this point.[1]

This doctrine, however, would only extend to the sustaining a determination on the part of the heritors and kirk sessions to grant such an exemption, and cannot be understood to sanction any right of exemption on the part of persons of this description, should an assessment be laid on them by the heritors and kirk session.

142. When the value of each inhabitant's estate is determined, a per-centage is imposed sufficient to raise the sum required to be levied. This per-centage may be calculated, either according to the income, or according to the actual wealth of the inhabitants.[2]

When the assessment is finally adjusted, notice ought to be given to each person, not only of the amount payable by him, but also of the estimated value of his property or income, on which the assessment laid on him is calculated. This practice is not enjoined by any Act of Parliament, but the propriety of it is evident, and seems to be sanctioned by the determination of the Court in the case of Ross.[3]

The apportionment should be renewed yearly, 'for the al-'teration that may be through death, and the increase and 'diminution of men's goods and substance.'[4]

ASSESSMENT IN BURGHS.

143. Till the decision in a late case,[5] the Act 1579, c. 74, which directs the assessment for the poor, whether in landward parishes or burghs, to be laid on 'the haill inhabitants, 'according to the estimation of their substance,' was consider-

[1] Gammell, Appendix, No. X.

[2] Laurie, Dec. 2, 1797. (M. 10587.) Cochrane, *ut supra.* Gammell, May 31, 1822, *ut supra.*

[3] Ross, Dec. 16, 1800. (M. Ap. Poor, 8.)

[4] 1579, c. 74.

[5] Buchanan, Feb. 21, 1827. (5. Shaw & Dunlop, 290.)

ed to be the regulating enactment for assessments in burghs.[1] In the case alluded to, however, it seemed to be held, that this statute had been superseded by the proclamation, 29th August, 1693,[2] which directs the magistrates in burghs 'to 'stent themselves, conform to such order used and wont in 'laying on stents, annuities, or other public burdens, in the 'respective burgh, as may be most effectual to reach all the 'inhabitants.' And it seemed to be considered as the import of this proclamation, that each burgh was entitled to follow the rule which had been sanctioned by its own usage.[3]

If this is to be considered as the legal rule, it renders it almost impossible to lay down any uniform system, applicable to burghs generally; for in this view, the decisions pronounced in reference to one burgh would not be applicable to another, which is held entitled to follow the peculiar method adopted in practice by itself. At the same time, however, there have been certain principles established by Acts of Parliament, or determined by decisions, which would seem to have a general application; and, at all events, the decisions as to one burgh must always be entitled to great weight, in regard to the others, unless it be expressly placed on the peculiar usage of that particular burgh. Several important judgments, therefore, relative to assessments, in the city of Glasgow, whence all the cases relative to this matter, decided in our Courts, have originated, may, perhaps, be properly referred to as affording rules for the determination of similar questions as to burghs in general.

144. A very important case from that city was lately de-

[1] 1 Ersk. 7. 63; Laurie, Dec. 2, 1797. (M. 10587.) &c.

[2] See, however, supra, 14 Note.

[3] It can scarcely be denied that practice favours this principle, for, however inconsistent with each other, all the burghs agree in following some peculiar rule of their own, not sanctioned by any authority other than their own usage. A report was ordered in the case referred to in the text, from all the burghs where assessments for the poor are levied, as to the manner of imposing them, and from the returns made in consequence, it appeared, that there were scarcely any two burghs which followed the same system, or adhered to the directions of the Act 1579. (See infra, 147.)

cided, as to whether a burgess, having a place of business within the burgh, at which he attended daily during the greater part of the year; but having his residence with his family in a neighbouring landward parish, was to be considered an inhabitant of the burgh to the effect of being liable in a rateable proportion of the assessment for the poor. The circumstances of the case were these:—Mr. Parker was a partner of an extensive mercantile house carrying on business at Liverpool, Demerara, and Glasgow, at each of which places a branch was situated, under the management of one or more of the partners. At Glasgow the company were possessed of a counting-house situated within the city, where the business was carried on with the assistance of one or two clerks, who formed the sole extent of the establishment, the company having no property of any kind locally situated in Glasgow, except the counting-house. This branch of the concern was managed by two of the partners, one of whom resided within the city of Glasgow, while the other (Mr. Parker) had his dwelling-house at a little distance, in the Barony Parish, where he rented a farm of £600 a-year, which he personally cultivated and managed. This house, in the Barony Parish, he occupied with his family, for about seven months in the year, during which period he personally attended at the counting-house in Glasgow, five days in each week, for two or three hours a day, but eating and sleeping with his family in the Barony Parish, where he spent the rest of the day in the superintendance of his farm. For the remainder of the year, in the summer months, he resided with his family at a small property belonging to him on the coast of Ayrshire; and during this time he usually came to town once a fortnight, where he resided for two days together or so at his house in the Barony Parish, giving his personal attendance at the counting-house for about three or four hours; and he was in use to visit Liverpool on the business of the company, at least three times in each year, for longer or

shorter periods, as circumstances might require. Mr. Parker was further a burgess of Glasgow—paid stent as a trader—had been a member of the Town Council, and had acted as an assessor for the poor's rates, in which character he concurred in imposing an assessment on himself for the poor of the city. He was at the same time assessed for support of the poor in the Barony Parish, which contains upwards of 50,000 inhabitants, and the assessment there was laid on him as one of the class of householders or inhabitants, according to the rule adopted in that parish for apportioning the half of the assessment falling on that class, viz. in proportion to the real rent of the heritable property within the parish occupied by each individual. The assessment in Glasgow had originally been laid on the company of which Mr. Parker was a partner, in respect of the funds estimated to form the stock of the trade there carried on; but in 1817, at the request of the partners, this mode was discontinued, and Mr. Parker, and the other partner resident in Glasgow, were separately assessed in the estimated amount of the stock belonging to each in the trade carried on at Glasgow. Mr. Parker, however, having refused to pay the assessment so imposed in 1819, an action was instituted against him, at the instance of Buchanan the collector of poor's rates for the city. In defence, by Mr. Parker, it was pleaded—that at the date of the act 1579, laying the assessment on the 'inhabi-'tants' all the traders within burghs actually resided in the burgh, so that there was not in existence a class of persons having merely a place of business within the burgh, but dwelling in another parish; and as the assessment for the poor was truly a tax on the subject which could not be extended without authority of the legislature, it could not be levied from a class of persons admitted to have been unknown at the date of the act, and whom therefore it could not possibly have included,—that the meaning of the term inhabitants, as used in the act 1579, is also explained to mean parties ac-

tually dwelling within the burgh, or parish, by various clauses in that and other acts, and particularly by a provision in the act 1672, which allows begging instead of support by assessment, and restricts the begging to asking alms, within the paupers' parish, of the parishioners 'at their own houses,'—that the circumstance of persons being allowed to trade, if possessed of a place of business in the burgh, though not residing there, did not depend on such persons being held to be inhabitants, in terms of the several statutes relative to trade, which, in the most express words, required actual indwelling, but on this provision requiring inhabitancy having fallen into desuetude, it having been expressly found by one decision, that if a burgess paid stent he might trade, though not an inhabitant; —that he was already assessed as an inhabitant, at his domicile in Barony Parish, and necessarily on his whole means and substance, though the rent of his farm was taken as the criterion of their amount;—and lastly, as to the alleged usage, that the usage of Scotland was so vague and contradictory as to afford no rule for decision whatever, and that the usage o. Glasgow, a single burgh, could not affect the construction of a general act of Parliament.

On the other hand, it was argued, that the statute 1579, being a remedial statute, was entitled to a liberal interpretation, and that, under such a statute, a person in the defender's situation would undoubtedly, by the law of England, where questions of this nature had frequently occurred, be held to be an inhabitant of Glasgow; that this construction was sanctioned by the interpretation put on the analogous statutes relative to trade, which allowed the privilege of trade to inhabitants of burghs only, but under which it had been repeatedly held, that a person not dwelling in the burgh, but having merely a place of business there, was entitled to trade —that the defender accordingly traded solely in virtue of this interpretation given to the term inhabitants in these statutes; and that in virtue of similar construction of the acts of Par-

liament regarding offices in burgh, he had been a member of the Town Council; and, finally, that the general practice of the burghs in Scotland had sanctioned this construction of the statute 1579; and in particular, that in the city of Glasgow, persons in the defender's situation had, for a long period, been in use to be assessed for support of the poor. This case was heard before the whole Court; and a majority of their Lordships concurred in holding that Mr. Parker was liable to be assessed.[1] In the opinion delivered for the majority, however, while the arguments of the pursuer as to the construction of the act 1579 were adopted, another view was taken of the question on grounds not alluded to by the parties in their pleadings. This was with reference to the proclamation, 29th August 1693, which (as already mentioned) directs the magistrates of burghs 'to stent themselves conform to such order and custom used and wont in laying on stents, annuities, or other public burdens, in the respective burgh, as may be most effectual to reach all the inhabitants;' and it was considered that, as Mr. Parker was confessedly liable in stent, and as it had been the usage in Glasgow to assess persons in his situation, he must, on both these grounds, be held liable in assessment, under the proclamation which it was stated, was to be considered as having superseded the act 1579, formerly looked upon as the regulating statute as to burghs.[2]

[1] Buchanan, February 21, 1827, (5 Shaw & Dunlop, 230,) a similar decision had been given in a case where the party had resided for several years at a considerable distance from Glasgow, but still kept up a dwelling-house there, with servants, in which he lived, when occasionally in the city for the purposes of his business. Collector of Poor's Rates of Glasgow v. Buchanan, 1798, noticed in Hutchison, ii. 47.

[2] The Court was much divided on this case. There voted for the judgment—Lords Craigie, Balgray, Gillies, Alloway, Cringletie, Eldin, Medwyn, and Corehouse; while Lords President Hope, Justice Clerk Boyle, Pitmilly, Meadowbank, Mackenzie, and Newton, were opposed to it.—I should not think myself justified in making any observations on the *decision* of the whole Court, pronounced after so much deliberation as took place in this cause; but I have,

145. In this case Mr. Parker was assessed only on the estimated stock belonging to him in the trade carried on at Glasgow, agreeably to the constant practice in Glasgow, in reference to persons not dwelling within the city. This practice is in conformity with the provision of the statute 1597, c. 280, which declares, with reference to all burgal taxations generally, that it shall not be lawful to the magistrates of burghs 'to stent ony persones therein according to their 'livings, and rents lyand outwith burgh. Bot only accord-'ing to their rents and haldings within burgh, as they do 'with other persones of their rancke and substance that hes 'na rente nor living outwith burgh and na utherwayes.'

Under this statute it is clear that an inhabitant of a burgh, whether actually dwelling there or not, cannot have any assessment laid on him in respect of landed property situated elsewhere; and it would seem also that when not actually dwelling in the burgh, he can only be assessed in respect of his heritable property within burgh, and the stock or profits of the trade there carried on, but not in respect of any other funds or estate.

146. Persons actually dwelling in the burgh have been found to be liable in assessment in respect of their whole means and substance of every description, and wherever situated, (excepting always land in another parish,)[1] and the amount of these funds may be estimated by the 'gude dis-'cretion' of the magistrates, or such persons as they may appoint assessors for that purpose.[2] The stock in trade of a person not actually dwelling in the burgh may be estimated in the same manner.

in a former part of this Treatise, ventured to make some remarks on the ground taken by the learned Judge who delivered the opinion of the majority, which I have mentioned in the text as not having been pleaded at the bar. See supra, 14. Note.

[1] Laurie, Dec. 2. 1797, (M. 10587.) Ross, Dec. 16, 1800, (M. Ap. Poor, 3.)

[2] Ibid.

147. Neither the act 1579, nor the proclamation 29th August, 1693, give any authority for separating the assessment in burghs into two parts, and laying one-half on the proprietor, and the other on the tenant: yet, in practice, this rule has been adopted in some burghs, where a certain amount is laid on each tenement, of which the one-half is levied from the proprietor, though not an inhabitant in any sense, and the other from the tenant. In other burghs again the whole is levied from the proprietors of heritable property alone, according to the rents of their several properties. In some it is laid solely on the occupiers, according to the rent of the tenements they respectively occupy; and in others, on the whole inhabitants, according to their means and substance; and it is in some instances paid out of the general funds of the burgh, or included in the ordinary stent for payment of cess, without any specific assessment for this purpose. In short, there are not two burghs in Scotland in which the mode of levying the assessment corresponds in every particular.

148. Members of the College of Justice are exempted from payment of poor-rates, in burghs.[1] It may be doubted whether this privilege would extend to them when not exercising the functions of members of the College, and not residing in Edinburgh, where alone the Court of Session sits.

Officers of the army and navy, residing on the King's service, are also exempted from the assessment on inhabitants.[2] The act here quoted refers only to burghs; but the same rule would be followed as to landward parishes.

149. The Act 1597, c. 279, which complains that 'there 'is diverse inhabitants that dwells and remains within the free 'burrows, with their families; and are of reasonable sub- 'stance. As alsua hes rents and livings within the samin 'burgh, yit refusis to contribut for the enterteinement of the 'puire, watching and warding within burgh, with the rest

[1] 1597, c. 279—1597, c. 68. [2] 1597, c. 279.

'of the nichtboures; or to bear their part of sik uther duties 'as concerns his Majestie's service, thereby living at liberty, 'neither knowand the magistrates in kirk nor policy, to the 'great hinderance of his Majestie's service and the haill 'realme,'—enacts in remedy thereof 'that all sik as hes their 'residence and dwelling within the saids burrows be their 'families; and may spend ane hundred punds of yeirly rent 'within the same, or stented be the discreet nichtboures to be 'worth twa thousand merks in free guddes, sall be subject 'to be burdened with the rest of the inhabitants, for the ad-'vancement of the glory of God, his Majestie's service, and 'weill of the burgh quhair they dwell.'

150 Several of our royal burghs have landward districts attached to them, which form, with the burgh, one parish; but there is no provision to be found in any of the statutes or proclamations as to the mode of assessment or management of the poor in such combined parishes; and the practice as to this, in the different burghs, is as various as in regard to other matters. The poor of the two districts being in some instances provided for by a joint assessment of the whole inhabitants of both; in others, the burgh and the landward district respectively, supporting their own poor; while in others, the burgh advances a certain definite proportion, as a third or a fifth of the sum necessary for the support of the whole poor, both to landward and in the burgh.

LEVYING THE ASSESSMENT.

151. In the event of any person refusing to pay his quota of assessment, or discouraging others, the act 1579, c. 74, declares, that he shall be called before the magistrates in burghs, and the justices in parishes to landward, and, on conviction, shall be imprisoned 'quhill he be content with the ordours of 'his said parish, and perform the same in deid.'

152. The mode of enforcing payment of the rate in land-

ward parishes, as subsequently established by the proclamations 11th August 1692, and 29th August 1693, is, that the minister, or, where the parish is vacant, two heritors, to be appointed for that purpose, shall give information to the Sheriff against delinquents, and that he shall 'call them before him 'without any delay, and, if guilty, fine them in double the 'quota which the minister or heritors shall attest to be wanting.' Power is farther given to the Sheriff 'to cause poind 'for the same immediately.'

It is doubtful whether any jurisdiction is granted to the Sheriff to determine anything as to the propriety or justice of the assessment, or as to the share apportioned on the delinquent. The attestation of the minister is all that is required by the proclamation; and that being laid before the Sheriff, his duty, it would rather appear, is merely ministerial.

In burghs the magistrates have the power of enforcing payment of the rates.[1]

APPEAL.

153. Parties holding themselves aggrieved, may have relief by suspension or advocation in the Court of Session. The Court, however, will not entertain a general declaratory action by an inhabitant of a parish as to the rule according to which he ought to be assessed.[2]

154. If an objection is taken merely to the amount of the share imposed on any individual, the Court will not interfere with the determination of the heritors and kirk sessions,

[1] A question was raised in a late case, whether it was competent to call before the magistrates a party not dwelling in the burgh, for payment of his rate, by leaving a copy of citation at his place of business within the burgh. It was not necessary, however, to decide it, as the defect was cured by a supplementary action in this Court, after the process before the magistrates had been brought here by advocation.—Buchanan *v.* Parker, *ut supra.*

[2] Boyd, Feb. 23, 1827. (5 Shaw and Dunlop, 233.)

so as to stay the levying of the assessments in the meantime, except on allegations of wilful or corrupt partiality.[1]

An action for repetition, however, it should seem, would be sustained on the ground of error merely.[2]

155. In the case already quoted it was found, that the party there complaining of the assessment imposed on him, had a right to inspect the assessors' books, in order to ascertain whether he was rated proportionably with the other inhabitants.[3]

CHARGES ON THE FUND.

156. The object to which the funds raised by assessment, in virtue of the act 1579, c. 74, and the proclamation 11th August, 1693, must be applied, is the support of the poor entitled to parochial relief.

157. As part of the means of supporting the poor, the expense of building a house for their reception may be raised by assessment.[4]

158. By the acts 1663, c. 16, and 1672, c. 18, an assessment was authorized for employing vagabonds and idle persons, and for the support of correction-houses. These acts, however, so far as relates to this subject, may be considered

[1] Ross, Dec. 16, 1800, (M. Ap. Poor, 3.) In this case, which was an advocation from the Magistrates of Glasgow, there being no allegation of wilful or corrupt partiality, the Court allowed decreet to be extracted for the sum assessed on Mr. Carrick, the complainer, which amounted to one-eightieth of the whole assessment of the city of Glasgow, 'without prejudice to his being afterwards heard in any action of declarator of repetition, if he shall be advised to insist therein.' The report bears, that the Court were unanimously of opinion, that unless a case of corrupt and wilful partiality were made out, they could not control the assessment imposed by the stent-masters. See also Gammell, May 31, 1822. (App. No. X.)

[2] Ross, ut supra.

[3] Ibid. The party in this case, however, was a member of the town-council of the burgh where the assessment was imposed, and a director of the hospital through which relief was administered to the poor; and several of the judges are stated to have been greatly influenced by these circumstances.

[4] Scot, Jan. 19, 1773. (M. 10577.)

as in total desuetude; and no assessment would now be sustained for the purposes authorized by them.

159. The expense of maintaining vagabonds while suffering imprisonment for vagrancy by sentence of a judge, to the extent of a pound of 'oatmeal per day,' and 'water to drink,' must be defrayed out of the assessment of the parish where they were apprehended.[1]

160. The expense of collecting and distributing the fund forms a proper charge on it, as the collector's salary,[2] sums expended in necessary law-suits, or the like.

But where the heritors and kirk sessions, or magistrates, engage in law-suits, without a just or reasonable cause, they will not be allowed to charge the expense of them against the funds. Thus, where an assessment had been imposed by the heritors and kirk session of a parish, separated only *quoad sacra*, the Court, in an action at instance of a party objecting, while they found the assessment to be absolutely null, also declared, that the expenses of the litigation should not be charged against the funds.'[3]

[1] 1579, c. 74.
[2] Proclamation, 11th August, 1692.
[3] Gammell, Nov. 26, 1816, (not reported.)

CHAPTER VI.

OF VAGABONDS.

161. The act 1579, c. 74, which first established a regular 'ordour of punishment' for sornares, maisterful beggars, and vagabonds, or vagrants, as they are termed in the law of England, gives the following list of those who shall be held to be such, viz.—'All idle persons ganging about in ony countrie 'of this realme, using subtil, craftie, and unlauchful plays, as 'juglarie, fast-and-lous, and sik uthers. The idle people call-'ing themselves Ægyptians, or any uther that feinzies them to 'have knawledge or charming, prophecie, or uther abused 'sciences, quhairby they pursuade the peopil that they can 'tell their weirdes, deathes, and fortunes, and sik uther fantas-'tical imaginations; and all persons being haill and starke in 'bodie, and abill to worke, alledging them to have bene herriet 'or burnt in sum far pairt of the realme, or alledging them 'to be banished for slauchter, and uthers wicked deides; and 'uthers nouther having land nor maisters, nor using ony 'lauchful merchandice, craft, or occupation, quhairby they 'may win their livings, and can give na reckoning how they 'lauchfullie get their living; and all minstrelles, sang-'sters, and tale-tellers, not avowed in special service be sum 'of the Lords of Parliament or great burrowes, or be the head 'burrowes and cities, for their commoun minstrelles; all com-'moun labourers, being personnes abill in bodie, living idle, 'and fleeing labour; all counterfaicters of licences to beg, or 'using the same, knowing them to be counterfaicted; all va-'gabond schollers of the Universities of Sanct Andrews,

'Glasgow, and Abirdene, not licensed be the rector and 'deane of facultie of the universitie to ask almes.' It is declared that these 'and all schipmen and mariners, alledging 'themselves to be schipbroken, without they have sufficient 'testimonialles, sall be taken, adjudged, esteemed, and pu-'nished, as strang beggarres and vagaboundes.'

162. The same statute farther declares, that any person who 'disturbis or lettis the execution of the act,' shall suffer the same pains as the vagabond would have incurred, whose correction he has impeded.

163. There are also included among vagabonds, (by this and subsequent enactments,) those poor persons, who, though entitled to parochial relief, either refuse to perform such work as they are able for, when required by the parish, or persist in begging without a license, or beyond the bounds of the parish to which their license extends, or refuse to pass to the parish of their own settlement.[1]

164. The punishment to which vagabonds were subjected by the earlier enactments[2] were exceedingly severe, extending to the loss of life, in cases of obstinate perseverance in their 'vagabond trade of life.' Such severity was perhaps not greatly misplaced, as at the date of those acts of Parliament, such persons were, in truth, 'for the maist pairt, 'thieves and counterfitte limmers.' Indeed, as to one class of vagabonds, viz. gypsies or Egyptians, so infallible was deemed the presumption that they must necessarily be habit and repute thieves, that by one act[3] they were declared liable to be put to death, merely on its being proved that they were Egyptians, without any evidence of their having committed a specific crime.

The latest enactment relative to vagabonds,[4] after declaring them liable to a month's imprisonment, on a diet of bread

[1] 1579, c. 74. Proclamation, 11th Aug. 1692.
[2] 1424, c. 7, 25 and 42.—1455, c. 45.—1457, c. 79.—1579, c. 74.
[3] 1609, c. 18.
[4] Proclamation, 11th Aug. 1692.

and water, for the first offence, ordains them, if found 'vaguing' a second time, to be farther marked with an iron on the face.

The only punishment in practice inflicted on vagabonds, is imprisonment for a short period, and laying them under surety for their good behaviour.[1]

165. The allowance to vagabonds, during imprisonment, is fixed by the act 1579, c. 74, at 'ane pund of ait bread and 'water to drink,' for the expense of which the parish where the vagabond has been apprehended is declared to be liable.

166. By acts of Parliament, 1663, c. 16, and 1672, c. 18, vagabonds, (along with other unemployed persons,) were made liable to be seized and employed in manufactories and correction-houses, to receive meat or clothes only, for the period of eleven years, certain allowances being payable by the parishes to the manufacturers or correction-houses so employing them. As to this, see infra, 172.

167. Beggars' children might, in like manner, have been taken into the service of individuals, and their labour compelled, till they attained the age of thirty years.[2] To this, however, the consent of parents, if alive or known, and if unknown, of the kirk session, was necessary, when the child was under fifteen; and when he was above that age, his own consent was requisite.

168. Receptors of vagabonds, who lodge or harbour them, are liable to a fine, at the discretion of the judge, but not exceeding £5 Scots, for behoof of the poor of the parish;[3] and persons giving alms to vagabonds are subjected to a fine of 20 shillings Scots for each offence, payable to the poor.[4]

169. The execution of the penalties against vagabonds is committed to the sheriffs, justices of peace, bailies, and magistrates of burghs. The kirk sessions were also intrusted

[1] Tait's Justice of the Peace, p. 407.
[2] 1617, c. 10.—1663, c. 16. Proclamation, 11th Aug. 1692.
[3] 1579, c. 74.—1617, c. 8.
[4] Proclamation, 11th Aug. 1692.

with the same powers, but they have long ceased to exercise them.

170. It has been supposed by some, that the statute 17 Geo. II. c. 5, commonly called the vagrant act, extends to Scotland.[1] There seems no sufficient grounds for holding this to be the case,[2] and it has never been acted on in this country.

[1] Bankt. 258. 1, Boyd, 183. 2, Hutchison, 70.

[2] Swinton's Abridgt. of Stat. tit. Vagrant. Kames' Statute Law, tit. Police. Tait's Justice of the Peace, 408. Note.

CHAPTER VII.

OF UNEMPLOYED PERSONS.

171. The distinctive mark of vagabonds who were subjected to the penalties noticed in the last chapter, was their 'fleeing labour,' and living in voluntary idleness. Provision was, however, made in some of the Acts of Parliament, for those persons 'not being in service, and not having any 'visible way or stock to entertain themselves,' who, although they might possibly be willing to work, and did not fall within the list of vagabonds contained in the act 1579, were, like them, made liable to a sort of servitude and compulsory labour in manufactories and correction-houses. These provisions are now in desuetude; and it might have been unnecessary to notice the acts by which they were established, were it not that a very general misunderstanding seems to prevail as to the purport of these statutes, which have been frequently appealed to, and have even formed the grounds of decision, in cases relative solely to the ordinary poor.

172. The act 1663, c. 16, proceeding on the narrative that the cause whereby 'vagabonds and idle persons do yet so 'much abound hath been, that there were few or no common 'works then erected in the kingdom, who might take and 'employ the saids idle persons in their service,' and that common works for manufactures are now setting up in the kingdom,—empowers manufacturers 'to seize upon and appre-'hend the persons of any vagabonds who shall be found beg-'ging, or who, being masterless and out of service, have not 'wherewith to maintain themselves by their own means and

'work, and to employ them for their service as they shall see 'fit, the same being done with the advice of the respective 'magistrates of the place where they shall be seized upon,' for the space of eleven years, for payment of meat and clothes only. During the first year of this period, the manufacturers were entitled to receive from the parish where the idle persons were born, and had their most common resort for the three last years, two shillings Scots per day for each person so employed, and one shilling per day for the next three years. These allowances were to be levied by assessment, 'the one half to be paid by the heritors, either conform to 'the old extent of their lands within the parish, or conform 'to the valuation by which they last paid assessment, or 'otherways as the major part of the heritors so meeting shall 'agree; and the other half to be laid on the tenants and 'possessors according to their means and substance.' If the heritors failed to raise this assessment, they were liable to be charged for payment by letters of horning for the whole sum, being allowed relief for one half against the tenants and possessors of their land.

By 1672, c. 18, these allowances were transferred to the correction-houses, thereby ordained to be erected, for the reception of all poor persons being 'of age and capacity to 'work,' and not entitled to support from the ordinary parochial funds. The masters of these were intrusted with similar power as the manufacturers, of keeping vagabonds and idle persons to work, and of confining them within the correction-house and its closs; and for that purpose were authorized 'to use all manner of severity by wheeping and other-'ways, excepting torture.' The Commissioners of Excise were directed to see this act carried into execution, and the Sheriffs were substituted in their place, by the proclamation 3d March 1698, which repeats the directions of the act 1692, as to building correction-houses by burghs, under additional pecuniary penalties in case of failure; and under the farther

penalty of being obliged to maintain such poor as were to be sent to correction-houses, until these were built.

This act was 'revived' by the proclamation 3d March 1698, in so 'far as concerns the providing correction-houses 'for the receiving and entertaining of beggars, vagabonds, 'and idle persons.'

173. Besides these provisions for putting idle persons and vagabonds to work, the proclamation, 11th August 1692, contains a general direction to the heritors to put to work, either within the parish or in neighbouring manufactories, all the poor able to work; and the general term of the proclamation leads to the conclusion that all idle persons and vagabonds were intended to be thus employed or supported by the parish. It would rather seem, however, that the proclamation must be construed in consistency with the previously existing law; and, accordingly, that this provision should be held to have reference to the prior act 1579, c. 74, and to include those poor only, who, though unable to maintain themselves by their labour, are yet 'not so diseased, lamed, or impotent, 'but that they may work in some manner of work.'

174. The enactments relative to vagabonds and idle persons are now in desuetude, but even should they be considered as still in force, yet being regulations of police intended for the security of the public, and not for the benefit of the individuals against whom their provisions are directed, they could only be enforced by the magistrates to whom their execution was intrusted, and could never be insisted on by those persons, for the punishment of whom they were enacted; and, accordingly, unemployed persons could have no right, under them, to demand work from the parish.

CHAPTER VIII.

OF THE ADMINISTRATION OF THE LAWS REGARDING THE POOR.

175. The administration of the laws relating to the poor and to vagabonds, has been committed to the heritors and kirk sessions, and the magistrates of burghs, on the one hand, and to the Sheriffs and Justices of the Peace, on the other, with distinct provinces and jurisdictions; all of them being subject to the control of the Supreme Civil Court. Certain powers are also, by the Acts of Parliament, vested in the Court of Justiciary. It therefore becomes necessary to consider separately the jurisdiction, 1. Of heritors and kirk sessions; 2. Of magistrates in burghs; 3. Of Sheriffs and Justices of the Peace; 4. Of the Court of Justiciary; and, 5. Of the Court of Session.

SECTION 1.

Of the Jurisdiction of the Heritors and Kirk Sessions.

176. The act 1579, in establishing a provision for the support of the regular poor, intrusted the administration of it to magistrates in burghs, and to Justices to be appointed by the King's Commission in parishes to landward. These persons were vested with the sole power of taking up the lists of poor, levying the assessment for their support, and, in

general, of ordering everything in regard to their disposal and maintenance. To them also, jointly with Sheriffs, &c. under prior Acts of Parliament, was intrusted the execution of the enactments regarding vagabonds and beggars. The power of explaining any ambiguity was granted to the King in council; and the Sheriffs, Stewards, &c. were only directed generally 'to see the act put to due execution in 'all these poyntes within their jurisdictions *respective*, as 'they will answer to God and our Soveraine Lord there-'upon.'

177. The jurisdiction thus committed to the Justices appointed by the King's commission in landward parishes, was, by the act 1572, c. 149, extended to persons to be nominated by the minister, elders, and deacons of each parish, in the event of the Sheriffs or Justices proving remiss and negligent; and by the statutes 1597, c. 272, and 1600, c. 19, it was altogether transferred to the kirk sessions, both in reference to vagabonds and to the ordinary poor; with power to the presbyteries 'to take trial of the obedience of the kirk sessions,' but only to the effect of reporting them to the King's ministers, that they might proceed against such as were negligent.

The act 1672, c. 18, confirmed to the kirk sessions the powers regarding the management of the poor, which, by an intervening statute, (1661, c. 38,) had been conferred on the Justices of Peace, but had not been exercised by them; and it joined with the kirk sessions the heritors who had previously been intrusted[1] with the power of levying assessments for employing vagabonds and idle beggars.

Finally, the proclamations of the Privy Council,[2] which were ratified in Parliament, confirmed the powers granted to the heritors and kirk sessions, and of new directed them to

[1] By act 1663, c. 16.

[2] 11th August 1692, 29th August 1698, and 8d March 1698; ratified by Acts of Parliament 1695, c. 43, 1696, c. 29, and 1698, c. 21.

make up lists of the poor, to levy assessments for their support, and to regulate the distribution of the funds. Besides the special powers necessary for these purposes, authority was granted to them generally 'to decide and determine all questions that may arise in the respective parishes in relation to 'the ordering and disposing of the poor, in so far as is not 'determined by the laws and Acts of Parliament, and the 'former proclamations of our Council.'

The jurisdiction relative to these different matters is conferred on the heritors and kirk session alone, and no power of control is expressly granted to any Court whatever.

178. This board, or court, is composed of the minister, elders, and heritors[1] of each parish.

179. To constitute the Court it is not necessary that there should be present one of each class. Thus they may competently act, although the minister be absent, although no heritor be present, or although the meeting be composed of heritors only.[2]

180. The separation, or annexation of a parish *quoad sacra* only, does not affect the management of the poor. Thus, if a portion of a parish be separated, and erected into

[1] A question has lately been stirred in practice as to who are to be considered heritors;—whether all proprietors of real property, though not liable in payment of cess, are to be held so, or whether this character can only be given to those who, by their titles, have a valued rent, and are liable in cess, or to those merely who are separately valued in the cess rolls of the county.—As there is no decision on the point, and as the question will probably shortly come before the Court, I shall refrain from making any observations on the subject, except to state, that in reference to the election of a schoolmaster, vested, by the act 1696, in the minister and heritors, without any qualification, the Court prior to the statute 43, Geo. III. c. 34, which required a certain extent of valuation in order to qualify an heritor to vote, adhered to an interlocutor, pronounced by the Lord Ordinary, finding, 'That every heritor, or proprietor of lands or houses 'in the parish of West Kirk, who, by his title-deeds, is liable in payment of 'cess and public burdens, has a title to vote in the election of the school-'master of said parish, whether such heritor's lands stand separately valued in 'the cess roll or not.'—Tosback *v.* Smart, July 18, 1771. (M. 13134.)

[2] Earl of Galloway, February 22, 1810. (F. C.) Humbie, February 15, 1751. (M. 10555.)

a distinct parish *quoad sacra*, the competent members of meetings of heritors and kirk session are still the heritors of the whole parish, which remains conjoined *quoad civilia*, and the kirk session of the original parish ;[1] and if the part thus separated be added *quoad sacra* to another parish, the members of the respective meetings of heritors and kirk session remain unchanged as to the management of the poor.[2]

181. The proclamation, 11th August, 1692, appoints the heritors and kirk session to hold meetings on the first Tuesday of August and the first Tuesday of February in each year, to order all matters relative to the support of the poor. They have a discretionary power, however, of meeting at all times.

The minister is entitled to call meetings of the heritors and kirk session. The act 1672, c. 18, directs intimation of meetings for taking up the lists of the poor to be made to heritors from the pulpit on the Sunday preceding the meeting; and the Court have found, that when any important matter is to be considered, notice must be given from the pulpit ten days before the meeting is to be held.[3]

If the minister refuse to perform his duty in this respect, or if the parish be vacant, meetings may be called by the heritors.

182. When assembled, each member present is entitled equally to one vote, both in reference to the ordinary administration of the Acts of Parliament, and to the management of mortifications for the use of the poor.[4] Supra, 113.

183. In royal burghs, the heritors and kirk session have properly no voice in the management of the poor, which is vested solely in the magistrates. See infra, 201-2.

184. It is now a very prevalent practice on the part of her-

[1] Gammell, Nov. 26, 1816, not reported.

[2] Thomson, Nov. 17, 1808. (F. C.)

[3] Humbie, February 15, 1751. (M. 10555.)

[4] Humbie, February 15, 1751. (M. 10555.) Earl of Galloway, February 22, 1810, (F. C.) and Case of Cardross, there referred to.

itors, in some parishes, to send proxies to meetings of heritors and kirk session, who assume the power of acting as constituent members of the meeting. The Acts of Parliament give no countenance to such a privilege of voting by proxy, but, on the contrary, confer the power of administering the poor laws on those heritors only who 'shall meet' with the ministers and elders;[1] and, unless practice may be held to have modified the provisions of the statute, it would seem to follow, that they, like the members of every other Court, must exercise their functions in person.[2]

185. If, however, the administration of the poor have been left to the kirk session, it has been found that any one heritor may, in an ordinary action, call them to account for their management of the fund,[3] even as to that half of the collections which, by the proclamation, 29th August, 1693, is left at the disposal of the kirk session alone.[4]

On the same principle, where the charge of the poor has been left entirely to the heritors, each member of the kirk session would be entitled to call them to account for their management, as the Acts of Parliament make no distinction in the powers granted to these two classes; nay, even where both heritors and members of the kirk session attend the meetings, it would seem, that any one of the board may insist against the others for an account of their management.

[1] 1672, c. 18. Proclamations 11th August, 1692, and 3d March, 1698.

[2] It is, however, proper for me to observe that a judge, whose opinion is entitled to great weight, (Lord Cringletie,) has, in a late case which came before his Lordship in the Bill Chamber, regarding the election of a Collector of Poor's Rates, expressed an opinion, that in consequence of the general practice, heritors may vote by proxy at meetings relative to the poor in the same way as they do at meetings for objects of patrimonial interests, as the building of school-houses, churches, and the like. A distinction may perhaps be taken between the election of a collector and the exercise of the other duties of the heritors and kirk session, as a court or board; but if this doctrine be admitted generally as applicable to all meetings relative to the poor, it will certainly be giving an effect to practice greater than the Court has yet done.

[3] Hamilton, Nov. 23, 1752. (M. 10570.) Black, Dec. 20, 1803.

[4] As to whether this half of the collection is applicable to any other purpose than the support of the poor, see supra, 107.

186. The jurisdiction of the heritors and kirk session relates, 1. To the taking up the lists of the poor; 2. To the levying funds for their support; 3. To the ordering and disposing of the maintenance of the poor; and, 4. To the execution of the laws against vagabonds. The heritors and kirk sessions seem never to have exercised the powers granted them in reference to this last class of laws, and their right to do so might perhaps be questioned, as being lost by desuetude. However this may be, the powers were conferred on them only cumulatively with Sheriffs and Justices of the Peace. As to their nature and extent, see infra, 215.

187. (1.) Under the first of these classes, viz. the 'taking 'up lists of the poor,' are included all questions as to the title of claimants to be relieved, as their poverty and their disability to support themselves by labour;[1] in reference to which the heritors and kirk session have the exclusive right to determine, in the first instance.[2]

188. It would seem that on the same principle on which the findings in the case of Paisley, here referred to, proceeded, must be included, among those matters in which the heritors and kirk session have the sole right of determining, in the first instance, all questions relative to the right of settlement, where the pauper claiming relief is the only party insisting in the right; for, in such cases, the question of settlement is simply a question as to the title to be relieved, and falls under the words of the statutes, which, in directing the heritors and kirk sessions to make up the lists of the poor, empower them to inquire 'in what parishes they have most 'haunted during the last three years.'[3] But there certainly appears to be a tendency, both in practice and in our courts, to make a distinction between this question of settlement and

[1] See infra, 209, the findings in the judgment in the Abbey parish of Paisley v. Richmond, &c. Nov. 29, 1821. (1 Shaw and Dunlop, 212.) and Higgins, July 9, 1824. (3 S. & D. 183.)

[2] Ibid. Note.

[3] 1672, c. 18. See also 1579, c. 74, and proclamation, 29th Aug. 1693.

those of disability and the amount of aliment, and to hold that when the right to be alimented is admitted the question of settlement, or whether a particular parish is bound to furnish that aliment, may competently be entertained by the Judge Ordinary.[1]

Where the settlement of a pauper and the burden of his maintenance is disputed between two parishes, the question then becomes one of patrimonial interest, and would undoubtedly be still held competent, as formerly, before the Judge Ordinary.[2] See infra, 212.

189. In making up the lists of the poor, it is the peculiar duty of the kirk session to investigate the circumstances of the claimants for relief, and to lay the results before the general body of heritors and kirk session.[3]

190. It is not required by any enactment that the claim for relief be in writing; but if the claimant be admitted to the roll, his name and surname, with his age and condition, ought to be inserted in a register-book, kept for that purpose.[4]

It would be very useful and expedient to insert, in like manner, in a minute-book or record, all other decisions and determinations of the meetings, as well as the admission of a claimant to the roll. This correct practice, though not expressly enjoined in any of the Acts of Parliament, has been adopted in many parishes, while others persevere in the careless and slovenly mode of determining every question verbally, and keep no record of their proceedings.

191. The heritors and kirk sessions may appoint two overseers to investigate the circumstances of the poor—to distribute the allowances among them, and otherwise to take charge

[1] See opinion of Lord Glenlee, in Parish of Glassford, July 10, 1827. (5 Shaw and Dunlop, 456.)

[2] As was done in Hutton, Dec. 6, 1770, (M. 10574,) Coldinghame, July 28, 1779, (M. 10582,) Rescobie, Nov. 28, 1807, (M. 10589,) and several other cases.

[3] 1672, c. 18.

[4] 1579, c. 74—1672, c. 18.

of the ordering of the poor,[1] there is, however, no special authority given for allowing such officers a salary.

192. The keeping of the record of the heritors and kirk session is generally intrusted to the session-clerk, whose salary is payable out of the poor's funds.[2]

The appointment to this office, however, is vested solely in the kirk session.[3] Session-clerks were, in one case, found to be removable by the kirk session, on reasonable grounds only;[4] but by a subsequent decision, it was determined that they are removable at pleasure, without cause shewn.[5]

193. (2.) In virtue of the authority granted to the heritors and kirk sessions, both directly, and as substituted in place of the King's Justices, 'to tax and stent the haill inhabitants within the parochin, according to the estimation 'of their substance, without exception of personnes,' 'by their 'gude discretions,' assisted by 'sik as they sall call to them 'to that effect,' they have the sole right of determining, in the first instance, whether an assessment shall be levied—the rule by which it is to be apportioned among the inhabitants, so far as the Acts of Parliament leave that discretionary, and all other questions relative to the execution of this delegated power of taxation, which, in reference to the ordinary poor, is conferred by the legislature on this body alone.

194. The heritors and kirk session may appoint an officer to collect the assessment, with a salary, payable out of the funds.[6]

195. The collection of contributions at church-doors is properly the province of the minister and elders; but when they neglect this duty, the heritors are in use to officiate in their stead.

[1] Proclamation, 11th Aug. 1692.

[2] Hamilton, Nov. 28, 1752. (M. 10570.)

[3] Magistrates of Elgin, Dec. 4, 1740, (M. 13124,) Nisbet, Nov. 17, 1773, (M. 8016.)

[4] Harvie, July 26, 1756. (M. 13126.)

[5] Anderson, Jan. 13, 1779. (M. 8017.)

[6] Proclamation, 11th Aug. 1692.

196. The kirk session has the exclusive privilege of letting out mortcloths to hire, for the benefit of the poor.[1]

Individuals or societies may, however, acquire a joint right as to this, by prescriptive usage.[2]

197. (3.) In reference to the administering the funds—to the ordering and disposing of the poor, and determining the amount and nature of the relief to be given in each particular case, the powers of the heritors and kirk sessions have been already sufficiently adverted to in treating of relief.—(Supra, 97, *et seq.*) Their jurisdiction in these matters, as has been stated, is exclusive of every other, in the first instance.[3]

198. Their powers, in reference to the administration of funds mortified for the use of the poor, whether of a whole parish or a specific district, where such funds are not intrusted to persons specially nominated, are equally extensive, and are subject to the same control as the powers possessed by them, in reference to the ordinary funds for the support of the poor.[4]

199. In the event of the heritors and kirk sessions neglecting their duty, and refusing to exercise the powers committed to their charge, the Acts of Parliament and Proclamations provided a remedy, by the infliction of fines, amounting to £200 Scots monthly, while they so fail.[5] The imposition of these fines was committed to Sheriffs and Justices of Peace;[6] and an effectual power of control was granted to the Privy Council, who were invested with full powers to cause all persons intrusted with the execution of the poor laws, to perform the parts enjoined to them.[7]

[1] Turnbull, Aug. 10, 1756, (M. 8013.)

[2] Dumfries, Feb. 18, 1783, (M. 8018.)

[3] Paton, Nov. 20, 1772, (M. 10577.) Coldinghame, July 28, 1779, (M. 10582.) Abbey parish of Paisley, Nov. 29, 1821. (1 Shaw and Dunlop, 212.)

[4] Proclamation, 11th Aug. 1692. Humbie, Feb. 15, 1751, (M. 10555.) E. of Galloway, Feb. 22, 1810. (F. C.)

[5] 1592, c. 149.—1600, c. 19.—1672. c. 18. Proclamation, 11th Aug. 1692.

[6] By Proclamation, 31st July, 1694. See infra, 204-5.

[7] 1695, c. 43.—1698, c. 21.

The powers of the Privy Council in this matter are now held to be vested in the Court of Session. As to these, see infra, 218, *et seq.*

200. The heritors and kirk session, being a court intrusted with powers of a judicial and ministerial nature, cannot be considered as a private body, liable to paupers in relief, and having their recourse against the parish at large. They must be regarded as judges bound to perform the duties of their office; and upon an obvious principle, therefore, it must be incompetent to sue them for aliment by an ordinary action, such as may be brought against a parent bound to support his child.

Accordingly, where the heritors and kirk session neglect to meet, or refuse to receive an application for relief, or to give judgment on it, the most effectual remedy would be by petition and complaint to the Court of Session, as against any inferior magistrate or judge who had failed in the execution of his duty, or was guilty of malversation in office, such as a Sheriff refusing to hold courts, or the like.[1]

It is also competent to apply to the Sheriff to have the heritors and kirk session ordained to meet, and take the case into consideration.[2] See infra, 213.

SECTION 2.

Of the Jurisdiction of Magistrates in Burghs.

201. The administration of the poor laws in royal burghs,[3]

[1] Since the first edition was published, a case has actually occurred, where the Court found such a complaint competent. Telford, March 10, 1826. (4 Shaw and Dunlop, 356.)

[2] Opinions of the Judges in Richmond *v.* Abbey Parish of Paisley. (Appendix, No. VII.) Glassford, July 10, 1827. (5 S. & D. 456.)

[3] Burghs of barony fall under the class of landward parishes. See supra, 122.

both as they relate to the regular poor and to vagabonds, was, by the act 1579, c. 74, committed to the magistrates. This power was renewed by the proclamation, August 29, 1693; and kirk sessions having been substituted in the place of the Justices in landward parishes only, the magistrates in royal burghs have continued to the present day in the management of the poor within their respective burghs.

In them are combined the different powers vested separately in the board of heritors and kirk sessions, and in Justices of the Peace. As managers of the ordinary poor, they have the same powers, and are in exactly the same situation with the former; and in reference to vagabonds and all other objects of the poor laws, they enjoy the same powers with the latter.

202. The magistrates of burghs are in use to devolve part of the management of the poor on the kirk sessions of the churches in their burghs; and so far as relates to the investigation of the circumstances of the poor, the distributing the funds to them, and ordering their residence and maintenance, they are entitled to avail themselves of the assistance of the kirk sessions, and of their advice on all occasions. But it is with the magistrates alone that the whole power of administration rests; and all acts relative to the poor must proceed on their authority.

SECTION 3.

Of the Jurisdiction of Sheriffs and Justices of the Peace.

AS TO THE ORDINARY POOR.

203. So long as the provisions of the Acts of Parliament were confined to the object of suppressing vagabonds, the

power of putting them into execution was intrusted to Sheriffs and other inferior magistrates.[1] On the establishment of a system for the support of the impotent poor by the act 1579, c. 74, the administration of which was confided (as has been seen above) to the magistrates in burghs, and in landward parishes to Justices named by the King's Commission, (afterwards superseded by the heritors and kirk sessions,) the Sheriffs, Stewards, and Bailies, were merely directed generally 'to see the act put into due execution' within their several jurisdictions.

204. This general charge was repeated by subsequent Acts of Parliament; and the extent and nature of the powers conferred on them for the purpose of exercising it, are set forth by the proclamation, 31st July, 1694, which authorizes Sheriffs, Justices of the Peace, and magistrates of burghs, 'to 'take trial how far, and in what manner, the said Acts of 'Parliament and Proclamations of Council have been obeyed, 'and put to execution,' by the 'ministers, heritors, and el-'ders of every parish, and householders and inhabitants with-'in the same,'—'and where any have neglected, or been de-'ficient and wanting in what is required of them by the said 'acts and proclamations, to amerciate and fine them therefor 'in manner therein specified.'

205. The fines declared to be leviable from the heritors and kirk session of a parish for neglecting to take the necessary steps for the support of the poor, were £200 Scots, monthly, while they so failed.

Inhabitants and householders refusing to pay the portion of assessment laid on them, were liable to be fined in double the amount of their quota.[3] These penalties were to be appropriated to the use of the poor.

206. By one Act of Parliament (1661, c. 38,) containing

[1] 1424, c. 7, 25 and 42.—1449, c. 22.—1503, c. 70.
[2] Proclamation, 11th August, 1692.
[3] Proclamation, 29th August, 1693.

instructions to Justices of Peace and constables, the former were directed to undertake the administration of the provisions for the support of the ordinary poor.

It does not appear, however, that they ever exercised the powers thereby conferred on them as to this matter; and, at any rate, the administration of the poor laws was restored to the kirk sessions, with whom the heritors were then for the first time joined, by the act 1672, c. 18, confirmed by the several proclamations. This part, therefore, of the act 1661, may be considered as virtually repealed, or at least fallen into total desuetude.

207. No power is, by any other enactment, granted to Sheriffs, Justices of Peace, or any inferior Judges, to decide on any question relative to the administration of the laws for the support of the ordinary poor. By the relaxation of practice, however, these magistrates and judges came to be in use of exercising even a primary jurisdiction in reference to such questions.

208. The assumption of this jurisdiction, in so far as it regarded the fixing the aliment to which an applicant for parochial relief was entitled, was early censured by the Supreme Court. It is noticed with disapprobation by Lord Kilkerran, in a case which occurred about the middle of last century, where the Justices of Peace had exercised this power.[1] More lately, where this had been done by the Sheriff, the Court reduced his decree, on the ground 'that he had arrogated to 'himself powers which belong exclusively to the minister, 'elders, and heritors of the parish,'[2] and a decision to the same effect was pronounced a few years thereafter.[3]

It is now, therefore, considered to be a settled point, that Sheriffs and other inferior judges cannot decide in the first instance, in any questions as to the administration of the

[1] Dunse, June 5, 1745, (M. 10553.)
[2] Paton, Nov. 20, 1772, (M. 10577.)
[3] Coldinghame, July 28, 1779, (M. 10582.)

laws relating to the ordinary poor within the jurisdiction of the heritors and kirk session, (as to which, see supra, 186, *et seq.*) at least while that body continues to meet, and to perform the duties intrusted to them. As to the case of their failure, see infra, 213, 220, *et seq.*

209. Besides the assumption of the power of determining, in the first instance, questions which fall exclusively within the jurisdiction of the heritors and kirk session, the Commissaries, Sheriffs, and Justices of Peace, were in use to review the decisions of these bodies on such questions; and it was not till very lately that their power to do so was questioned. The first case which is reported on this subject occurred in 1821.[1]

In consequence of the great distress occasioned by the sudden stagnation of trade in 1819, several hundreds of able-bodied men in the town of Paisley having been thrown out of employment, applied to the parish for relief. The heritors and kirk session having refused to support them, on the ground 'that they did not fall within the class of poor for 'which the law provided,' they applied to the Sheriff. He repelled an objection to his jurisdiction, and ordained the heritors and kirk session to meet and assess themselves for the relief of these persons. But in an advocation, the Court adhered to an interlocutor of the Lord Ordinary (Lord Pitmilly,) which assoilzied the parish, in respect, 'that by the 'Acts of Parliament and royal Proclamations regarding the 'poor, the determination of the two following questions:— '1st, Whether claimants of parochial aid are of the description of persons that are entitled to such relief?—and, 2d, 'If they be of this description of persons, what shall be the 'amount of the assessment and relief?—is vested in the heritors and kirk session of the parish, and that no control on 'the proceedings and determination of the kirk session in 'these particulars is committed to Sheriffs or other inferior

[1] Abbey Parish of Paisley, Nov. 29, 1821. (1 Shaw & Dunlop, 212.)

'judicatures; and in respect, the powers committed to Sheriffs 'to see the enactments relative to the poor carried into effect, 'do not infer a jurisdiction to interfere with the decisions of 'the heritors and kirk session on either of the two questions 'above referred to.'

The interlocutor reserved to the applicants, 'if dissatisfied 'with the proceedings of the heritors and kirk session of 'their parish, to apply by a competent action to the Supreme 'civil Court.'[1]

210. This decision may be held to have settled the law, that the judgment of the heritors and kirk session, as to all matters relative to the ordinary poor intrusted to their charge by the Acts of Parliament, cannot be reviewed by any judicature but the Supreme Court. For although the question at issue only regarded the powers of the Sheriff, yet the findings of the Court are framed so as to include Justices of the Peace, and all inferior jurisdictions whatever; and such accordingly has been the opinion expressed by the Judges on different occasions since that judgment was pronounced.

211. In like manner, although the only question embraced by this decision related to the title of an applicant to be supported out of the poor's funds, yet the case seems necessarily to determine the rule of law to be adopted in regard to the powers, in reference to all other questions, exclusively granted by Acts of Parliament to heritors and kirk sessions. It establishes the general principle, that, as to the matters committed to their determination in the first instance, they are free from all control by inferior judges, except where power to that effect is specially given by the legislature; and this is nowhere done as to any question whatever. (See, however, as to questions of settlement, supra, 188.)

[1] In the Appendix, No. VII. will be found the opinions of the Judges in this important case, which the Lord Justice Clerk, with his usual courtesy, has permitted the author to publish from his Lordship's most valuable and accurate notes of the proceedings of that Division of the Court over which he has long so ably presided.

212. If, however, a point relating to the poor laws occur in an action in which the inferior judge is competent to decide, he must necessarily have the power of determining this question, as essential to the explication of his proper jurisdiction. Thus, a Sheriff must have the power of determining those questions relating to the right of settlement which may arise in actions of relief by one parish against another, or competitions between two parishes, arising in cases where a pauper being uncertain as to the parish bound to support him, brings an action against more than one. In the case of a claim for relief by a pauper, such a question may be considered to resolve into that of his title to be supported, and, as such, to be solely under the jurisdiction of the heritors and kirk session. But when it occurs in an ordinary action of recourse by one parish against another, which is, in truth, a matter of patrimonial interest, and competent before the Sheriff, it then falls necessarily under his cognizance, and accordingly his jurisdiction to this effect has been sanctioned in practice by a series of cases.[1]

Even in such cases, however, of recourse by one parish against another, the Sheriff cannot fix the amount of future aliment to the pauper. He can merely determine which parish is liable to support him, and leave the heritors and kirk session to fix the aliment in the ordinary way.[2] But as to aliment actually advanced by one parish to a pauper belonging to another parish, he would undoubtedly be entitled to give decree for the specific amount in an action of relief.

On the same principle, on which the Sheriff has jurisdiction in such actions of recourse by one parish against another, he ought also to be held to have jurisdiction in similar actions against parishes by individuals who have supported paupers, whom they were not liable by law to maintain; and his jurisdic-

[1] Hutton, Dec. 6, 1770, (M. 10574.) Coldinghame, July 28, 1779, (M. 10582.) Rescobie, Nov. 28, 1801, (M. 10589) and several others.

[2] Paton, Nov. 20, 1772, (M. 10577.) Coldinghame, May 28, 1779, (M. 10582.)

tion in such cases seems to have been formerly acknowledged;[1] but in a late case, however, the Court were equally divided on such a question.[2]

213. Where the heritors and kirk session refuse or neglect to meet and take an application for relief into consideration, the Sheriff has jurisdiction to entertain an application from the pauper to the effect of ordaining the heritors and kirk session to meet and consider his claim, and give a deliverance thereon;[3] and in the case of Glassford, quoted in support of this doctrine, the Court further found that the Sheriff was entitled to take a proof as to the pauper's settlement, but only to the effect of enabling him to decide whether he will order the heritors and kirk session to meet.[4]

[1] Howie, January 25, 1800, (M. Ap. Poor 1.) Opinion of Lord Justice Clerk in the case of the Abbey Parish of Paisley *v.* Richmond. (Appendix, No. VII.)

[2] Glassford, July 10, 1827, (5 Shaw and Dunlop, 456.) See more particularly as to this case, infra, Note 4.

[3] Glassford, *ut supra*, Opinions of Judges in Abbey Parish of Paisley, *ut supra*.

[4] The circumstances of this case were as follows: Orr, an operative weaver in the parish of Glassford, received into his house, to board, an infant child of one Torrance, whose wife had deserted him, and who was said to have a settlement in the parish. Torrance having died, Orr made repeated verbal applications to the minister to have the child taken off his hands. These were either neglected, or, as the minister alleged, were verbally refused by him. At last, Orr presented a written petition to the heritors and kirk session; but no deliverance was given on this petition, nor any meeting held to take it into consideration. He then presented a petition to the Sheriff, praying him to ordain the heritors and kirk session to take the child off his hand, and relieve him of its support; and, failing their doing so, to find them liable to him in such sum of aliment as might be deemed reasonable, or, at all events, to ordain them to meet and take the case into consideration. The heritors and kirk session, besides alleging that Glassford was not the parish of Torrance's settlement, and that the child had relations who were bound to maintain it, objected to the Sheriff's jurisdiction; but, after some procedure, certain interlocutors were pronounced by the Sheriff-substitute sustaining his jurisdiction, and allowing a proof as to the question of settlement; and the Sheriff-depute having adhered, the heritors and kirk session brought an advocation. In the meantime, however, between the date of the interlocutors of the Sheriff-substitute and that of the Sheriff-depute, the heritors and kirk session had held a meeting, when, instead of disposing regularly of Orr's application, they merely approved of the minister's conduct, which had consisted in refusing verbally Orr's applications, and resisting his petition to the Sheriff. This was properly considered as making no alteration on the case, in

Doubts have been entertained, whether in such a case Sheriffs and Justices of the Peace would not further be entitled to supply their deficiency by directly exercising the powers vested in these bodies. Such doubts, as to the

which the Lord Ordinary (Lord Cringletie) pronounced the following interlocutor: 'In respect that the petition in this case to the Sheriff was not at the instance of 'the pauper himself, but at the instance of the respondent, who, it is admitted 'on all hands, was not bound to aliment him, and was brought against the parish 'of Glassford for relief of the burden of maintaining the child, and that the jur-'isdiction of the Sheriff has always been sustained in such cases, and was 'acknowledged by the Court in the case of the Abbey Parish of Paisley; and 'also in respect that the Sheriff has jurisdiction to order the kirk session to meet 'to consider whether a pauper is entitled to aliment or not, and consequently 'may take such steps as will enable him to judge whether he should order or 'not the kirk session to meet for that purpose; and in respect that in this in-'stance the Sheriff has done no more than to take such measures when the advo-'cation was brought, remits the cause *simpliciter* to the Sheriff.' The heritors and kirk session having reclaimed against this interlocutor, the Court adhered to it, 'in so far as it remits the cause *simpliciter* to the Sheriff, "in respect that 'the Sheriff has jurisdiction to order the kirk session to meet to consider 'whether a pauper is entitled to aliment or not;"' but being equally divided as to the other ground on which the interlocutor was founded, they at the same time recalled, *quoad ultra*, 'the *rationes decidendi* of that interlocutor as unne-'cessary.' It may be deemed presumptuous on my part to venture to express any doubt of the correctness of a decision of the Court; but the questions here involved are so important that I cannot refrain from making a few observations on this judgment, both in so far as it does not, and in so far as it does adhere to the interlocutor of the Lord Ordinary.

1. In so far as the Court did not adhere to the interlocutor of the Lord Ordinary, finding the action competent before the Sheriff, in respect of its being an action of recourse by a third party who had supported the pauper.—It is clear, and indeed it is admitted on all hands, that if the action had been at the instance of another parish, it would have been competent before the Sheriff; but it appears to me difficult to draw any legal distinction between an action of recourse by one parish against another, and by an individual third party against a parish. The jurisdiction of the Sheriff does not surely arise from the party pursuing being a parish, but from the nature of the action being one which involves a question of patrimonial right. The heritors and kirk session are no doubt the sole judges in the first instance of claims by paupers for aliment; but there is no authority in our acts of Parliament for holding that they are likewise the sole judges in the first instance of demands of recourse at the instance of third parties. In such circumstances they are not judges, but parties, and their refusal to relieve the individual, is not the judgment of a court, but the refusal of a party. Against such a refusal the individual seeking recourse could not advocate as a pauper could do against a judgment

Sheriffs, have probably originated from a misapplication of the act 1672, c. 18. By that statute, the Commissioners of Excise, in the event of the heritors and kirk sessions not sending the idle paupers, &c. to the correction-houses, and neglecting to raise the allowances for their support there, were empowered to exercise the powers granted primarily to the heritors and kirk session for that purpose; and, by the proclamation, March 3, 1698, the Sheriffs were substituted in place of the Commissioners of Excise.

refusing to aliment him: and, on the whole, it humbly appears to me, that the Lord Ordinary was right in sustaining a jurisdiction which the Court seem to have sanctioned directly in the case of Alyth (Howie, M. Ap. Poor 1,) and by strong implication in a series of other cases of actions by one parish against another; and indeed this case cannot be considered as a *decision*, contrary to the Lord Ordinary's opinion, for although two of the Judges differed from his Lordship, the Court qualified their recal of the *ratio decidendi* on this point, stating it to be recalled 'as unnecessary.'

2. In so far as the Court adhered to the Lord Ordinary's interlocutor.—If the Court had thereby merely sustained the jurisdiction of the Sheriff to ordain the heritors and kirk session to meet and pronounce a deliverance on the application presented to them, there could be no room for the slightest doubt as to the correctness of the judgment; or had they even sustained his right to decide the question of settlement, this might have been held to be sanctioned by the practice of the country; but the import of the decision was, that the Sheriff was entitled to investigate the question of settlement, not however to the effect of deciding that question, but merely for the purpose of enabling him to come to a conclusion on the point, whether or not he would order the heritors and kirk session to meet. Now, with the greatest deference, there does appear to me some little inconsistency here. If the Sheriff cannot determine the question of settlement, and can do nothing more than ordain the heritors and kirk session to perform the duty imposed on them by law, of meeting and deciding on claims for aliment brought before them, it seems very unnecessary for him to investigate the question of settlement, for it is the duty of the heritors and kirk session to meet and consider applications made to them, whether it shall turn out that the applicants are truly entitled to relief from them or not; and they would not be entitled to refuse to meet, because they thought the pauper had no settlement, that being a matter in order to determine which they are by statute bound to meet. The Sheriff therefore would be entitled at once to ordain them to meet and do their duty by deciding on the claim, without first ascertaining whether the heritors and kirk session will be bound to support the pauper if he prove a fit object for parochial relief; and, on the other hand again, if the Sheriff be entitled in such a case to decide the question of settlement, the judgment does not go far enough, as it only sustains his jurisdiction to the effect of ordaining the heritors and kirk session to meet.

The powers granted by the act 1672, however, related solely to the execution of the laws regarding vagabonds and idle persons, and had no reference whatever to the case of the regular poor, as to the management of whom no jurisdiction was ever vested in these commissioners; and in none of these enactments (except the act 1661, c. 38, considered above, 206) is there any appearance of an intention to confer on Sheriffs or Justices of Peace the power of actually administering the laws, in reference to this class of poor, in any event whatever.

They are, no doubt, directed to see the different Acts of Parliament put to due execution; but the powers granted them for that purpose (except as to vagabonds, &c.) extend only to the right of ordaining the heritors and kirk sessions, and all others, to give obedience to the Acts of Parliament, and to perform the duties with which they are charged, and of imposing the specified penalties on them in the event of neglect or refusal. (See supra, 204.) They would probably, however, be held entitled to enforce their authority, by also awarding an allowance to the pauper, while the heritors and kirk session refused to obey their order to meet and consider the case.

214. Sheriffs have the power of fining persons refusing to pay the portion of assessment laid on them, in double the amount of their quota.[1] Persons giving alms to beggars out of their proper parish were, by proclamation, 11th August, 1692, made subject to a penalty of twenty shillings Scots; heritors refusing to send vagrants out of the parish in a penalty of £20 Scots, and persons appointed to conduct them to their own parishes, in two merks, for neglecting their duty. The power of imposing these penalties is given to Sheriffs, Justices of the Peace, and Magistrates of Burghs, by proclamation, 31st July, 1694.

[1] Proclamation, 29th August, 1693.

AS TO VAGABONDS AND IDLE PERSONS.

215. The powers of Sheriffs and Justices of the Peace, as to the execution of the laws against vagabonds and unemployed persons, are very extensive, and as to these they possess a jurisdiction in the first instance.[1] They are intrusted generally with the power of inflicting the different penalties directed against vagabonds, strong beggars, and their receptors, (as to which see supra, p. 164.) To the Sheriffs also, both directly and as coming in place of the Commissioners of Excise, was committed the power of carrying into execution the provisions for the employment of vagabonds and idle persons, masterless and out of service, in correction-houses, &c. when the parties charged with doing so in the first instance, failed in the performance of their duty.[2] These latter provisions, however, having become obsolete, the powers for carrying them into execution have, in like manner, fallen into disuse.

SECTION 4.

Of the Powers of the Court of Justiciary.

216. By several acts of Parliament, the Judges of the Court of Justiciary were directed to try Egyptians, vagabonds, &c. at their several circuit courts.[3] But since the severity of the punishments directed against these individuals has been so much mitigated in practice, the Court of Justiciary has not been called upon to exercise this jurisdiction. It would, however, of course, have the power of reviewing, by advocation, any sentence of an inferior judge inflicting punishment on such delinquents.

217. By 1592, c. 149, the Judges Ordinary and the Jus-

[1] 1424, c. 7, c. 25, 42.—1449, c. 22.—1503, c. 70.—1579, c. 74.—1617, c. 18.—1663, c. 16.—1672, c. 18.—Proclamation, August 29, 1693.

[2] 1663, c. 16.—1672, c. 18.—Proclamation, July 31, 1694.

[3] 1455, c. 45.—1457, c. 79.—1535, c. 22.

tices in landward parishes are rendered amenable to the Court of Justiciary for neglecting or refusing to put the Acts of Parliament relative to the poor into due execution, but only to the effect of being subjected to the penalties provided by the Legislature for disobedience or neglect.

SECTION 5.

Of the Powers of the Court of Session.

218. The Supreme Civil Court has an inherent jurisdiction, which can only be excluded by express Act of Parliament, over all inferior civil judicatures of every description. Where, however, these inferior judicatures are invested by the Legislature with special powers as to particular objects, the jurisdiction of the Court of Session as to these is only appellate and not primary.

Thus, although no power is expressly given to the Court of Session over the proceedings of meetings of heritors and kirk sessions, it has an inherent jurisdiction over them, and can review all their determinations;[1] but the Judges will not interfere with their decision as to the amount of the provision allowed to a pauper, unless it be elusory or totally inadequate.[2]

219. Nor will the Supreme Court, in the first instance, exercise any of the powers committed by the Legislature to the heritors and kirk session for the provision of the poor.

220. The Supreme Court may not only review the decisions of the heritors and kirk session, but it seems to possess a controlling power, where the heritors and kirk session refuse or neglect to meet and to exercise the powers intrusted to them for the support of the poor. In such a case, the Supreme Court would, in virtue of its inherent jurisdiction, be

[1] Higgins, July 9, 1824. (3 Shaw and Dunlop, 188.)

[2] Ibid. note. Robert, Feb. 5, 1825. (3 S. and D. 348.) See, however, supra, p. 62. note 2.

entitled to proceed against the heritors and kirk session so failing in the performance of their duty, as against any other inferior magistrates and judges.

221. By the statute 1672, c. 18, power is given to the Privy Council 'to appoint all ways and means' for making the provisions of the act effectual; and the three latest statutes relative to the poor which appear in the statute-book, grant generally to the Privy Council 'power to cause put 'the saidis laws and Acts of Parliament in execution, and 'particularly to cause the persons therein intrusted to do 'and perform their parts according as they are thereby en-'joined.'

222. Since the abolition of the Privy Council in Scotland, the Court of Session has been held to have succeeded to their powers of redressing wrongs, for which there is no other effective remedy; and it would accordingly, therefore, on this ground also, be entitled to cause heritors and kirk sessions 'to do and perform' the duties assigned them by the Acts of Parliament as to the poor, in the same way as the Privy Council might formerly have done. It must, of course, be held to possess every power necessary to the exercise of such a jurisdiction.

223. The proper form of bringing the determinations of heritors and kirk sessions under review of the Court of Session is by advocation,[1]—that of complaining of their conduct, in neglecting to provide for the poor, is by petition and complaint,[2] in the course of which the Court might give relief to the party complaining, as well as punish the heritors and kirk session failing in their duty.

224. When the heritors and kirk session have not given a written judgment, it has been doubted whether advocation would be competent, there being no record. Should an advo-

[1] Higgins, July 9, 1824. (3 Shaw and Dunlop, 183.)
[2] Telford, March 10, 1827. (4 S. and D. 356.)

cation be held incompetent in such a case, it could only be on the ground that the heritors and kirk session had not pronounced a determination on the question; and they would accordingly be liable to be proceeded against as having failed in the performance of their duty.

225. The Court of Session has an equal power of control and review over the proceedings of private trustees of mortifications for behoof of the poor, as over those of heritors and kirk sessions.

CHAPTER IX.

OF THE POOR'S ROLL IN THE COURT OF SESSION.

226. THE benevolent provision which our law makes for enabling indigent persons to prosecute their just rights, owes its origin to a statute of a date so early as the reign of James I. By an act of the second parliament of that monarch, (1424, c. 45,) it is provided—'Gif there bee onie pure creature for 'faulte of cunning or dispenses, that cannot, nor may not fol-'low his cause, the King, for the love of God, sall ordaine 'the judge before quhom the cause suld be determined to pur-'wey, and get a leill and wise advocate to follow sik pure crea-'tures' causes; and gif sik causes be obteined, the wranger 'sall assyith baith the partie skaithed, and the advocate's 'coastes and travel.' Under the authority of this statute, a regular institution has gradually been formed for the accomplishment of the humane object contemplated by it, and is now regulated by various acts of sederunt, particularly that of date 16th June, 1819—of which a copy will be found in the Appendix, No. XI.[1]

227. By that A. S. following the provisions of preceding enactments of the Court, the Faculty of Advocates are directed to appoint six of their number annually, to be advocates for the poor; and the Writers to the Signet, and the Agents or Solicitors, are in like manner directed to nominate four of their number respectively, to be writers and agents for

[1] The several Acts of Sederunt on this subject, are as follows: A.S. March 2, 1534; April 27, 1535; Nov. 20, 1686; June 9, 1710; June 16, 1742; August 10, 1784; July 11, 1800; June 16, 1819; and Dec. 24, 1825.

the poor; and a list of the persons so appointed is ordered to be given in by these bodies respectively, to the junior clerk of each division, which list is appointed to be entered in the books of sederunt.[1]

228. An alphabetical record or roll, is, by the A. S. 11th July, 1800,[2] appointed to be kept by the junior clerk of session, of all applications for the benefit of the poor's roll, and of the deliverance thereon; and the clerks of each division are directed by A. S. June 16, 1819,[3] on or before the sixth sederunt day of each winter session, to make up and report to the Lord President of the Division, an abstract of the number of applications which have been presented for the benefit of the poor's roll during the year preceding, with the manner in which they have been disposed of.

229. In like manner, the advocates and agents for the poor, are directed to box a report, by the same day, to the Lord President of each Division, of the actual state of the poor's roll of that Division, the number and names of the persons enjoying the benefit of it, with the dates of their several warrants of admission or renewal, and any special matter relating to that roll generally or to any particular case, which they think the Court ought to know.[4]

230. The act 1424, as seen above, describes the persons for whose advantage it was framed, as 'pure creatures, who, for 'faulte of cunning, or dispenses, cannot, nor may not, follow 'their cause;' and the A. S. 10th August, 1784, mentions, as the parties entitled to the benefit of the poor's roll, persons in 'indigent circumstances, and altogether unable to 'prosecute their claims in a court of law.' The degree of poverty necessary under these descriptions, to entitle a party to the benefit of this institution, may be somewhat uncertain; but at all events, in practice, the right of admission to the poor's roll is not held to be limited to that class of paupers who are proper objects of parochial relief.

[1] A. S. June 16, 1819, § 1. [2] § 7. [3] § 10. [4] § 9.

231. There are only two decisions, however, reported on this subject. By the one, it was found, that it was no objection to a party getting on the poor's roll, that he was possessed of heritable property, if he was unable to support himself;[1] and by the other, that a lad who was clerk in a counting-house, with a salary of £30 yearly, was not entitled to the benefit of the poor's roll.[2]

232. A party, desirous of obtaining the benefit of this institution, must apply, by petition, to the Court of Session, specifying the process or processes, raised, or to be raised, for which it is craved;[3] and this petition must be accompanied by a certificate under the hands of the minister, and two elders of the parish where he resides, setting forth his circumstances according to a specified formula, a copy of which will be found in the Appendix, No. XI.[4]

233. To obtain this certificate, the party must (if his health permit) appear personally before the minister and elders, and make a statement or declaration of his circumstances, as specified in the above-mentioned formula; and the minister and elders are desired to certify how far the statement consists with their own proper knowledge, or the knowledge of any of them, or whether it rests solely on the statement of the party; and, in the latter case, to certify further, whether he be of good character, or worthy of credit.[5]

234. Before making this declaration to the minister and elders, ten days intimation of the time and place fixed for emitting it, must be given to the opposite party, and evidence of such intimation must be produced to the minister under the hand of a notary public, messenger-at-arms, sheriff or town-officer, or other officer of the law.[6]

235. This declaration, with the certificate of the minister and elders, and certificate of intimation to the opposite party,

[1] ——— May 24, 1814. (F. C.)
[2] Wallace, June 11, 1823. (2 Shaw and Dunlop, p. 391.)
[3] A. S. Nov. 20, 1686. [4] A. S. June 16, 1819, § 2.
[5] Ibid. § 3. [6] Ibid. § 4.

are declared to be the warrant for the petition to the Court. But if (as has happened in a few, though very few instances) the minister and elders refuse to receive the poor person's declaration, and grant the corresponding certificate, the Court will, on the petition being moved, (these circumstances being duly set forth in it) remit to the Sheriff of the county where the party resides, to receive the declaration and report.[1] Of the diet fixed for this declaration, the intimation of ten days would seem to be necessary, as in the case of that before the minister and elders.[2]

236. The petition to the Court may be in writing; and besides the process copy and original certificates to be lodged with the clerk, one other copy only is necessary, which is to be boxed for the President of the Division to which application is made. To this, however, a copy of the declaration of the party, and of the certificate by the minister and elders, must be appended.[3] The petition on being moved, if the requisites have been properly complied with, is then ordered to be intimated in the minute-book and on the walls, for ten days; on the expiry of which period, it is again moved, and as a matter of course remitted to two of the counsel and one of the agents, or a writer and an agent for the poor nominatim,[4] to report whether the applicant has a *probabilis causa litigandi*, and is otherwise entitled to the benefit of the roll. On this remit being made, it is the duty of the writer to the signet, or agent named in it, to procure from the applicant or his former agent, information as to the circumstances of the case, and to draw up a full memorial thereof, and to direct and assist the applicant in procuring such further evidence or explanation as to the circumstances of the case or his own poverty, as may appear to be necessary.[5]

[1] Rattray, July 8, 1824. (2 Shaw & Dunlop, 175.)

[2] So the Court intimated on the occasion of such a remit lately, *Poor* M'Coll v. Downie, July 7, 1827. (Not reported.)

[3] A. S. June 16, 1819, § 5.

[4] A. S. Aug. 10, 1784, § 4. June 16, 1819, § 5.

[5] A. S. June 16, 1819, § 11.

237. The counsel and agents are then to consider the memorial so prepared, and determine whether the applicant has a *probabilis causa litigandi*, and also to hear all objections which may be offered by the adverse party as to the truth of the statements in the applicant's declaration, and the certificate of poverty; and they are entitled to require further evidence as to this matter.[1] Having made the necessary investigations, &c., the counsel and agent are then to report to the Court, whether the applicant has a *probabilis causa litigandi*, and whether the statements in his declaration appear to be correct.[2]

If they report that he has not a *probabilis causa*, or that his statements are untrue, the Court will refuse his petition; although they are sometimes in use, on special circumstances being stated, to make a second remit to the counsel and agents. On the other hand, if the report be favourable, the Court generally admit the applicant, although it is still competent, to the adverse party, at this stage, to oppose the petition being granted, on the ground that the applicant's circumstances, as reported, are not such as to entitle him to the benefit of the roll. He might probably also be entitled to object to the accuracy of the report as to these circumstances, so as to obtain a second remit; but the Court would not probably listen to any argument against the report, in so far as it regards the *probabilis causa*.

238. This is the proper stage for objecting to the party's obtaining a warrant for admission to the roll, and if objections are not stated now, they will not be listened to afterwards,[3] unless perhaps as against an application for a renewal of the warrant.

239. If the Court, on considering the report, deem the applicant entitled to the benefit of the roll, they grant a warrant accordingly, confined to the process, in respect of

[1] A. S. June 16, 1819. § 6. [2] Ibid. 6.

[3] Plowman, Dec. 1, 1823. (2. Shaw & Dunlop. 530.)

which the application is made, to subsist for the period of two years,[1] in virtue of which his cause is conducted gratuitously, and without payment of any of the ordinary dues of Court.

240. The counsel and agent who have reported on the cause, are also appointed to conduct it after the applicant has been admitted to the roll, and they continue to do so while he remains on the roll, although they may have ceased to be counsel and agents for the poor.

241. It is directed by the A. S. 16th June, 1819, that the names of the counsel and agent appointed to conduct the cause, shall be marked on the margin of the summons and defences, or letters of advocation and suspension, and on the back of every subsequent paper given in; and that no enrolment shall be made except by the agent so appointed, nor in the name of any advocate but the counsel so appointed; and the word 'Poor' is directed to be prefixed to the name of the party, on every paper given in to Court.[2] It is further provided, that no other advocate or agent shall be employed, or shall allow their names to be used in any stage of the cause, unless, on an application to the Lord Ordinary or the Court, the assistance of one of the other advocates or writers for the poor shall be specially authorized; in which case, those first appointed, and those so added, shall thenceforward act conjointly in the cause;[3] and it is declared, that in the event of any of these particulars being neglected, the Court, on the application of the adverse party, may open up and set aside the previous proceedings in the cause, deprive the party of the benefit of the poor's roll, or apply such other remedy as the circumstances may require.

242. On the expiry of two years from the date of the original warrant, if no renewal be obtained, the party can have no longer any benefit therefrom, except that he is entitled to

[1] A. S. June 16, 1819. § 8.
[2] § 13. [3] Ibid. [4] § 14.

a gratis extract of any decree which may have been pronounced,[1] and the subsequent renewal after an interval from the date of expiry, will not, it would appear, draw back in its effects to the intervening period.[2]

243. Application for renewal of the warrant may be made by note to the President of the Division where the cause is depending; which note must be accompanied by a report from the counsel in the cause, stating whether it appears to him or them that the party has still a *probabilis causa litigandi*, and giving a concise detail of the steps which have been taken for bringing the process to a conclusion, and the cause which appears to have prevented a final determination.[3] This note must be intimated to the agent for the adverse party in common form, before boxing it for the Lord President;[4] and it would appear to be competent for the opposite party then to state such circumstances as may warrant a refusal to renew the privilege.

244. Even before the expiry of the warrant the Court will, on special circumstances being stated, remit to the counsel and agent, to report whether the party has still a *probabilis causa*, and is still in circumstances to entitle him to the benefit of the roll. Thus, in the course of an action of damages by a party on the poor's roll, the defender having judicially offered £40 and the expenses of process, and this offer having been refused, the Court remitted to the counsel and agents to report whether after this offer the party had still a *probabilis causa litigandi*, and on their reporting that he had not, and ought to accept the offer, they ordered his name to be struck off the roll.[5]

245. If a party on the poor's roll gain his cause with ex-

[1] A. S. Aug. 10, 1784. § 5.

[2] Dicta of Court, in Murdoch, June 3, 1825. (4 Shaw & Dunlop, 54.)

[3] A. S. June 16, 1819. § 8.

[4] Ibid.

[5] M'Intosh, Dec. 18, 1821. (1 S. & D. 253.)

penses generally, this will be held to include the expense of getting on the roll.[1]

246. It was at one time held inconsistent with the object of the poor's roll that parties having the benefit of it should, when unsuccessful, be subjected in expenses, even though litigious.[2] A different rule, however, has now been adopted in practice, and parties on the poor's roll are held liable to be subjected in expenses of process like other litigants.

247. But a party on the poor's roll, residing beyond the jurisdiction of the Court, is not bound to sist a mandatory who shall be liable for expenses, if awarded. In such a case the mandatory may be sisted under the qualification that he is not to be so liable.[3]

248. In a late case, where expenses of a previous branch of the cause had been awarded against a party on the poor's roll, the Lord Ordinary found, that before he could be allowed to go on with his cause, he must not only pay the expenses previously awarded, but must find caution for those which might subsequently be incurred. The Court, however, recalled his Lordship's interlocutor, and found that he was not bound so to find caution.[4] There was no occasion to decide whether he was bound to pay the expenses previously awarded, as the Court held that these had been settled, but the majority of their Lordships seemed to be of opinion that he was.

249. A party on the poor's roll is equally liable with other litigants to suffer the penalties imposed in consequence of the neglect of agents. Thus, when the agent for a party on the poor's roll had neglected to obtain a reclaiming

[1] Cameron, June 25, 1814. (F. C.) —— May 31, 1821, (1 Shaw & Dunlop, p. 42. note.)

[2] Crinsean, June 15, 1749. (M. 10555.) Paton, Nov. 20, 1772. (M. 7669.)

[3] Carling, March 10, 1826. (4 S. & D. 359.) In a previous case, when the party was not on the poor's roll, though in an inferior rank of life, it was held sufficient if the mandatory was of the same condition with himself. Scott, January 29, 1823. (2 S. & D. 152.)

[4] Barry, May 30, 1827. (5 S. & D. 343.)

petition to be marked by a principal Clerk of Session, within the reclaiming days, it was held that the interlocutor was final, and an application to be reponed without payment of previous expenses was refused by the Court.[1]

250. In like manner, in reference to the Act of Sederunt of 12th November 1825, regulating the new form of process, which provides generally that parties may be reponed in a certain way against decrees in absence, but only on payment of previous expenses, the Court enacted by A. S. Dec. 23, 1825, that although the party be on the poor's roll he shall not be reponed without payment of previous expenses like other litigants, 'unless it shall appear upon investigation that 'the decreet so pronounced has gone out from the inability 'of the party to furnish information, and not from any fault 'or neglect of the agent in the cause.'[2]

251. The terms of the statute, 1424, seem to imply, that whenever a party on the poor's roll gained his cause, his opponent should be subjected in expenses. In practice, however, the Court exercise the same discretion in awarding expenses, in regard to the causes of parties on the poor's roll as to those of other litigants.

252. A party on the poor's roll having obtained decree for expenses, his opponent suspended a charge given thereon, on the ground that he had certain counterclaims which he was about to constitute by actions which he had raised, and that he ought not in these circumstances to be obliged to make payment to a person who had sued *in forma pauperis*, and must necessarily be considered as insolvent. The Court, however, refused his bill of suspension.[3]

[1] Pratt, June 9, 1824. (3 Shaw & Dunlop, 85, and note.)

[2] This regulation may perhaps be a necessary one, but there does appear some little inconsistency in subjecting the party to expenses arising from the neglect of agents, over whom he has no control, and in whose appointment he has no voice, while, on the other hand, he is relieved from the penalty of failure, which arises from causes personal to himself, and which are common to all litigants equally with him.

[3] Dunbar, July 11, 1826. (4 S. & D. 500.)

APPENDIX.

APPENDIX.

No. I.

1579, c. 74, *For Punischment of Strang and Idle Beggars and Relief of the Pure and Impotent.*

Forsameikle as there is sundry lovabil Acts of Parliament maid be our Soveraine Lord's maist nobil progenitours, for the staunching of maisterful and idle beggars, away putting of sornares, and provision for the pure; bearing, that nane sall be thoiled to beg, nouther to burgh nor to land, betwixt 14 and 70 zeires. That sik as make themselves fules, and ar bairdes, or uthers siklike runners about, being apprehended, sall be put in the Kingis waird or irones, sa long as they have ony gudes of their awin to live on. And fra they have not quhairupon to live of their awin, that their eares bee nayled to the Trone, or to an uther tree, and their eares cutted off, and banished the countrie; and gif thereafter they be found againe, that they be hanged.

Item, That nane be thoiled to begge in ane parochin, that ar borne in ane uther. That the heades men of ilk parochin make takinnes, and give to the beggars theirof, that they may bee sustein'd within the boundes of that parochin; and that nane uther bee served with almes, within that parochin, but

they that beares that takinne allanerlie, as in the Actes of Parliament theiranent at mair length is conteined. Quhilkes, in the time bygane, hes not beene put to dewe execution, threw the iniquitie and troubles of the time by-past, and be reasoun that there was not heirtofoir ane ordour of punischment, sa speciallie devised, as need required, bot the saidis beggares, beside the uthers inconvenientes, quhilks they daylie produce in the common-wealth, procure the wrath and displeasure of God for the wicked and ungodlie forme of living used amongs them, without marriage, or baptizing of a great number of their bairnes. THEREFOIR, now, for avoyding of the inconvenients, and eschewing of the confusion of sindrie lawes and actes concerning their punischment, standing in affect, and that some certaine execution and gude ordour may follow theranent, to the great pleasure of Almichtie God, and common weill of the realme; it is thocht expedient, statute, and ordained, as weil for the utter suppressing of the saidis strang and idle beggars, sa contagious enimies to the common weill, as for the charitabil relieving of aged and impotent pure peopil, that the ordour and forme following bee observed: That is to say, that all persons being above the aige of fourteen and within the aige of three scoire and ten zeires, that heirafter ar declared and set foorth be this act and ordour to be vagaboundes strang and idle beggars, quhilkes sall happen at ony time heirafter, after the first day of Januar nixt to cum, to bee taken wandering and misordering themselves, contrarie to the effect and meaning of thir presentes, sall be apprehended, and, upon their apprehension, be brocht befoir the provost and baillies within the brugh, and, in everie parochin in landwart, befoir him that sall be constitute Justice be the Kingis commission, or be the lords of regalitie, within the samin, to this effect; and be them to be committed in waird in the commoun prison, stokkes, or irons, within their jurisdiction, there to be keeped, unlatten to libertie, or upon

Vagabonds and idle beggars suld be punished.

bande or sovertie, quhill they be put to the knawledge of ane assize, quhilk sall be done within sex dayes thereafter; and gif they happen to be convicted, to bee adjudged to be scourged, and burnt throw the eare with ane hote iron; the processe quhairof sall be registrate in the Court buikes; except sum honest and responsal man will of his charitie bee contented then presentlie to act himselfe before the judge, to take and keip the offender in his service for ane haill zeir nixt following, under the paine of twentie pound, to the use of the pure of the toun or parochin. And to bring the offendour to the head court of the jurisdiction at the zeires end, or then gude pruife of his death; the clerke taking for the saide acte twelve pennies onely: And gif the offender depart and leave the service within the zeir, against his will that receivis him in service: Then, being apprehended, he sall be of new presented to the Judge, and, be his command, scourged and burned throw the eare, as is forsaid. Quhilk punischment, being anis received, hee sall not suffer againe the like, for the space of threescoir dayes thereafter, bot gif at the ende of the saidis lx. days, hee be founden to be fallen againe in his idle and vagabound trade of life: Then, being apprehended of new, he sall be adjudged, and suffer the paines of death as a thief.

Of him quha flyes his master's service.

And that it may be knawn quhat maner of persones ar meaned to bee idle and strang vagabounds, and worthie of the punischment before specified, It is declared, that all idle persones, ganging about in ony countrie of this realme, using subtil, craftie, and unlauchful playes, as juglarie, fast-and-lous, and sik uthers. The idle peopil calling themselves *Ægyptians*, or any uther that feinzies them to have knawledge or charming, prophecie, or uthers abused sciences, quhairby they persuade the peopil that they can tell their weirdes, deathes, and fortunes, and sik uther phantastical imaginations; and all per-

Quha suld be esteemed vagabounds and idle beggars.

sones being haill and starke in bodie, and abill to worke, alledging them to have bene herried or burnt in sum far pairt of the realme, or alledging them to be banished for slauchter, and uthers wicked deides; and uthers nouther havand land nor maisters, nor using ony lauchful merchandice, craft, or occupation, quhairby they may win their livings, and can give na reckoning how they lauchfullie get their living; and all minstrelles, sangsters, and tale-tellers, not avowed in special service, be sum of the lords of parliament or great burrowes, or be the head burrowes and cities, for their commoun minstrelles; all commoun labourers, being personnes abill in bodie, living idle, and fleeing labour; all counterfaicters of licences to beg, or using the same, knowing them to be counterfaicted; all vagabound schollers of the Universities of *Saint Andrewes*, *Glasgow*, and *Abirdene*, not licensed be the rector and deane of facultie of the Universitie to ask almes; all schipmen and mariners, alledging themselves to be schipbroken, without they have sufficient testimonials, sall be taken, adjudged, esteemed, and punished, as strang beggarres and vagaboundes. And gif ony person or personnes after the said first of Januar nixt to cum, gives money, harberie, or ludgeings, settis houses, or shawes ony uther reliefe, to ony vagabound or strang beggar, marked or to be marked, wanting an licence of the provest and baillies within burgh, or of the judge within that parochin: The samin being dewlie provin at the court, they sall pay sik unlaw to the use of the pure of the parochin, as be the judge at the court sall be modified, swa the same exceed not five punds. And alswa, gif any person or personnes, disturbis or lettis the execution of this act ony maner of wayes or makes impediment against the judges and ordinarie, officiars, or uthers persones, travelling for the dew execution heirof, they sall incur the same paine quhilk the vagabound

Of them quha maintaines or receipts vagabounds.

Of them quha stayes the execution of this act.

suld have incurred, in ease he had bene convict. Providing alwayes that schipmen and souldiours, landing in this realme, have licence of the provest or baillies of the towne, or the judge of the parochin, quhair they war schippebroken, or first entered in the realme, sall, and may passe, according to the effect of their licences, to the rowmes quhair they intend to remayne. And that the licence onelie serve in the jurisdiction of the giver; sa that gif the person travelling hame, have farther journey, he procure the like licences of the judge of the nixt parochin or towne throw quhilk he mon passe, and sa fra parochin to parochin, till he be at his resting place. And that there be certaine persones, ane or maa, nominate in everie burgh and parochin, be the officers and judge thereof, for searching, receiving, and convoying of the vagaboundes, to the commoun prison, irones, or stokkes, upon the commoun charges of the parochin. Quhilkes persones sa elected, sall be halden to do their dewtie diligentlie, as the saidis judges will answere thereupon. And seeing charitie wald that the pure, and aged, and impotent persones, suld be als necessarilie provided, as the vagaboundes and strang beggars repressed, and that the aged, impotent, and pure people, suld have ludgeing and abiding places, throught the realme to settle themselves intil: It is, therefore, thocht expedient, statute, and ordained, that the Lorde Chancellar, according to the derection of sindrie lovabil Actes of Parliament heirtofoire maid, sall call for the erectiones of all hospitalles to be produced befoir him, and inquire and considder the present estait theirof, reducing them, so far as is possible, to the first institution, as may best serve, for the helpe and reliefe of the saidis aged, impotent, and pure peopil; and als that the provests and baillies of ilk burgh and towne, and the justice constitute be the King's commission, in every parochin to landwart, sall,

Of souldiers and schipbroken men.

Searchers of vagabounds.

Reparation of hospitals for aged and impotent persones.

Inquisition suld be takes of aged, pure and impotent persons.

betwixt and the said first day of Januar nixt to cum, take inquisition of all aged, pure, impotent and decayed persones borne within that parochin or quhilkes was dwelling, and had their maist commoun resorte in the saide parochin the last seven zeires by past, quhilkes of necessitie mon live bee almes: And upon the said inquisition, sall make ane register buike, conteining their names, and surnames, to remaine with the provest and baillies within the burgh, and with the justice in everie parochin to landwart; and to the effect, that the number of the pure people of everie parochin may be knawin, statutes and ordainis, that all pure peopil, within fourtie dayes after the proclamation of this present act, at the Mercat Croce of *Edinburgh*, repayre to the parochin, quhair they were borne, or had their maist commoun resorte or residence, the last seven zeires by past, and there settil themselves, under the paine to be punished as vagaboundes, and contravenars of this present proclamation.

All pure peopil suld return to their awin parochin —and of their sustentation.

And the said space of fourtie dayes being by-past, that then the Provost and Baillies within burrowes, and the judge constitute be the kingis commission in ilk parochin, to landwart make a catalogue of the names of the saidis pure people, inquire the men and women quhair they wer borne, quhidder they ar maryed or un-maried, quhen, and be quhom they war maried, and quhat bairnes they have, and quhair their bairnes wer baptized, and to quhat forme and trade of life they addresse them-selves and their saidis bairnes: Gif they be diseased or haill and abill in bodie, and quhat they get commonly on the daye, be their begging: And sik as necessairlie mon be susteined be almes, to see quhat they may be maid content of their awin consentis to accept daylie to live unbeggand, and to provide quhair their remaining sall be, be them-selves, or in hous with others, with advise of the parochiners, quhair the saidis pure peopil may be best ludged and abyde. And thereupon, according to the number, to

consider quhat their neidful sustentation will extende to everie oulk, and then, be the gude discretions of the saidis provests, baillies and judges in the parochinis to land-wart, and sik as they sall call to them to that effect, to taxe and stent the haill inhabitants within the parochin according to the estimation of their substance, without exception of persones, to sik oulklie charge and contribution, as sall be thocht expedient and sufficient, to susteine the saidis pure peopil. And the names of the inhabitants stented, togidder with their taxation, to bee likewise registrate: And that, at their discretion, they appoynt overseers and collectours in everie burgh, toun and paroche, for the haill zeir, for collecting and receiving the said oulklie portion, quhilkes sall receive the same, and deliver sa meikle thereof to the saidis pure peopil, and in sik maner as the saidis provests and baillies within burgh, and judges in the parochin to land-wart, *respective*, sall ordaine and command; and that overseeres of the saidis pure peopil be appoynted be their discretions, to continue also for a zeir. And at the end of the zeir, that the taxation and stent roll be alwayes maid of new, for the alteration that may be throw death, or be incres or diminution of mennes gudes and substance. And that the provest and baillies in burrowes or tounes, and the saidis judges in the parochines to land-wart, sall give an testimonial to sik pure folk as they find not borne in their awin parochin, or making residence therein, the last seven zeirs, sending or directing them to the nixt parochin, and sa fra parochin to parochin, quhill they be at the place quhair they were borne, or had their maist commoun resort or residence, during the last seven zeirs preceding; there to be put in certaine abiding places, and susteined upon the commoun almes, and oulklie contribution, as is befoir ordained, except leprous peopil, and bedfast peopil, quilks may not be transported; providing that it be leiful to the pure peopil, sa directed, to

Collectors for almes.

Overseers.

Stent roll.

Testimonials to be given to the pure.

their owin abiding places, with testimonialles to aske almes in their passage, sa as they passe the direct way, not resting twa nichtes together in any an place, without occasion of seekeness or storme impeede them.

Of the pure refusand to return to their awn parish.

And if ony of the pure peopil refuse to passe and abide in the places appoynted, or, after the appoyntment, be found begging, then to be punished by scourging, imprisonment, and burning throw the eare, as vagabounds and strang beggars; and for the second fault, to be punished as thieves, as is befoir appoynted. And gif the persones chosen collectours, refuse the office, or, having accepted the same, beis found negligent therein, or refusis to make their compts, everie half zeir, anis at the least, to the provests and baillies in the burrowes, and to the saidis judges in land-wart, and to deliver the super-plus, of that quhilk restes in their handes, at the end of the zeir, or half zeir, to sik as sall be chosen collectours of the new: Then ilk-ane of the offenders so offending, sall in-cur the paine of twentie punds, to the use of the pure of that parochin, and imprisonment of their persones during the kingis will: For quhilkes paines, the saidis provestis, baillies and judges, sall poynd and distrenzie: And gif ony persones, being abill to further this charitable woorke, will obstinatlie refuse to contribute to the releife of the pure, or discourage uthers from sa charitabil ane deede: The obstinate or wilful person, being called befoir the saidis provests and baillies within burgh, or judges in the parochins to land-wart, and convict thereof be ane assise, on sufficient testimonie of twa honest and famous witnesses his nichtbours, upon the supplication of the saidis provests, baillies, and judges, to the Kingis Majestie and Privie Councel, the obstinate and wilful person or persones, sall be commanded to waird in sik pairt, as his hienes, and his councel sall appoynt, and there remaine quhill he be content with the ordour of his said paroch, and

Collectors.

Of them quha refusis to contribute to the help of the pure.

performe the same in deede: And gif the aged and impotent persones, not being sa diseased, lamed, or impotent, bot that they may worke in sum maner of wark, sall be, bee the overseeres in ony burgh or parochin, appoynted to wark, and zit reffusis the same: Then, first, the refuser to be scourged, and put in the stokkes; and for the second fault, to be punished as vagabounds, as said is. Of the pure refusand to woorke.

And gif any begger's bairne, being above the age of five zeirs, and within fourteene, male or female, sall be liked of, be ony subject of the realme of honest estait, the said person, sall have the bairne, be the ordoure and derection of the said provest and baillies within burgh, or the judge of every parochin to land-wart: Gif he be a man-child, to the age of xxiv. zeirs, and gif sche be a woman-child to the age of xviij. zeirs, and gif they depart, or be taken or intised from their maister or maistresse service, the maister or maistresse, to have the like action and remedie, as for their hired servand or prentises, asweil against the bairne, as against the taker and intiser thereof. Of beggers' bairnes.

And quhair collecting of money may not be had, and that it is over great ane burding to the collectours to gadder victualles, meat, and drink, or uther things for the releife of the pure in some parochines: That the provest and baillies, in burrowes, and the saidis judges, in the parochines to land-wart, be advise of certaine of the maist honest parochiners, give licence under their handwrits to sik, and sa many, of the saidis pure peopil, or sik uthers of them, as they sall think gude, to ask and gadder the charitable almes, of the parochiners, at their awn houses. Sa as alwayes, it bee speedily appoynted and agried, how the pure of that parochin, sall be susteined within the same, and not to be chargeable to uthers, nor troublesome to strangers. Collection of victualles, meat, and drink.

And seeing the reason of this present act and ordour, the commoun prisone, irrones, and stokkes of everie head burgh of the schire, and uthers townes, ar like to be filled, with ane great number of prison-

ers, nor of befoir hes bene accustomat, in sa far, as the saidis vagaboundes, and uthers offenders, ar to be committed to the commoun prisone of the schire or towne, quhair they were taken, the same prisones being in sik townes, quhair there is a great number of pure peopil, mair nor they ar weill abill to susteine and relieve: And sa the prisoners at like to perish in default of sustenance: Therefoir, the expenses of the prisoners sall be payed be a pairt of the commoun contributions, and oulkly almes of the parochin, quhair he or sche was apprehended, allowand to ilk person ane punde of ait breade, and water to drink: For payment quhairof, the presenter of him to prisone sall give sovertie, or make present payment: And that the schireffes, stewardes, and baillies of regalities, and their baillies, over all the realme, and their deputes, see this present act put to dew execution in all poyntes, within their jurisdictions *respectivé*, as they will answer to God and our Soveraine Lord thereupon: And quhat ever doubt or ambiguitie sall happen to arise upon this act, or ony pairt thereof: Our Soveraine Lord, with advise of his saidis three estaites, commitis the interpretation, explanation, suppliement, and full execution thereof, to his Majestie, with advise of his Privie Councel.

Expenses of prisoners.

Execution of this act.

Interpretation of this act.

No. II.

EXCERPT FROM 1672, c. 18.

Act for Establishing Correction-houses for idle Beggars and Vagabonds.

AND to the effect that it may be known what poor persons

are to be sent to the saids correction-houses, and who are to be keeped and entertained by the contributions at the paroch kirk for the poor, the ministers of ilk paroch, with some of the elders, and, in case of vacancy of the kirks, three or more of the elders, are hereby ordered to take up an exact list of all the poor persons within their paroches, by name and surname, condescending upon their age and condition, if they be able or unable to work, by reason of age, infirmity, or disease, and where they were born, and in what paroches they have most haunted during the last three years preceding the uptaking of these lists; intimation being alwayes made to the whole heritors of the paroch to be present, and to see the lists right taken up; and that the heritors who, and the possessors of their land, are to bear the burden of the maintainance of the poor persons of each paroch, or any of them who shall meet with the said ministers and elders, shall condescend upon such as through age and infirmity are not able to work, and appoint them places wherein to abide, that they may be supplied by the contributions at the paroch kirk; and gif the same be not sufficient to entertain them, that they give them a badge, or ticket, to ask almes at the dwelling-houses of the inhabitants of their own paroch only, without the bounds whereof they are not to beg; and that they do not at all resort to kirks, mercats, or any other places, where there are meetings at marriages, baptismes, burials, or upon any other public occasion. And likewise, that such of the saids poor persons as are of age and capacity to work, be first offered to the heritors or inhabitants of each paroch, that, if they will accept any of them to become their apprentices or servants, that they may receive them, upon their oblidgment to entertain and set to work the saids poor persons, and relieve the paroch of them; for which cause they shall have the benefit of their work until they attain the age of thirty years, conform to the Act of the twenty-two Parliament of King James the Sixth; and the rest of the saids poor per-

sons be sent to the correction-houses; for whose entertainment the saids heritors shall cause contributions, and appoint a quarter's allowance to be sent along with them, with cloaths upon them, to cover their nakedness; and the said allowance to be paid quarterly thereafter, by way of advance.

No. III.

William and Mary, 11th August, 1692.

Proclamation of the Privy Council anent Beggars.

William and Mary, &c. to

, Macers of our Privy Council, messengers-at-arms, our Sheriffs in that part, conjunctly and severally, specially constitute, greeting: Whereas several good laws have been made by our royal predecessors for maintaining the poor, and relieving the lieges of the burden of vagabonds; in prosecution whereof, we hereby require the heritors, ministers, and elders of every parish, to meet on *the Second Tuesday of September* next at their parish kirk, and there to make lists of all the poor within their parish, and to cast up the quota of what may entertain them according to their respective needs; and to cast the said quota the one half upon the heritors and the other half upon the householders of the parish; and to collect the same in the beginning of every week, month, or quarter, as they shall judge most fit; and to appoint two overseers yearly to collect and distribute the said maintenance to the poor, according to their several needs; and likewise to appoint an officer to serve under the said overseers, for inbringing of the maintenance, and for expelling

stranger vagabonds from the parish, whose fee is to be stented on the parish, as the rest of the maintenance for the poor is stented. And such poor as are not provided of houses for themselves or by their friends, the heritors are to provide them with houses on the expense of the parish, in manner foresaid.

And if any parish shall fail in providing sufficiently for their own poor, the parish so failing shall pay the sum of £200 Scots, to be uplifted, a third part to the pursuer, and two parts to be applied to the maintenance of the poor of the parish, and that monthly, *toties quoties*, as they shall fail in their duty. And if there be any mortifications already, or if any hereafter shall accrue to any parish, the same shall be applied, by the advice of the heritors and elders, to the use aforesaid, but without diminution of the stock of the said mortifications. And the heritors and elders are hereby appointed to have a second meeting at the said parish kirks this year, on the second Tuesday of October next, for a more exact settling of the matter; and yearly thereafter, the heritors, ministers, and elders of every parish, are to meet on the first Tuesday of February, and the first Tuesday of August, yearly, to consult and determine herein as shall be thought fit, for every ensuing half-year, and to appoint overseers by the year or half-year, as they shall conclude.

And all the ministers are hereby required to give timeous information to the Sheriff of the shire, if any parish shall fail in performance of this Christian duty, in whole or in part; and the Sheriff, or Sheriff-depute, are hereby required to call the delinquent before them without any delay, and, if guilty, to fine them in double the quota which the minister shall attest to be wanting, and to cause poind for the same immediately. And where churches are vacant, that two of the greatest heritors residing within the parish shall be appointed by the first meeting in September next, to inquire into the

duty of parishioners and overseers, and to inform the Sheriff of their delinquence.

And if any of the poor of the parish are able to work, the heritors of the parish are hereby authorized and required to put them to work according to their capacities, either within the parish or to any adjacent manufactory, as they shall find expedient, furnishing them always with meat and cloth.

And if any young children be found begging under the age of fifteen years, any person who shall take the said children and bring them before the heritors, ministers, and elders, and cause registrate the name and designation of the child in the session-book, and shall there enact himself to educate the said child either to trade or work, and take an extract of the act from the clerk of the session, the said child shall be obliged to serve the said person so educating him for meat and cloaths, until he pass the 30th year of his age. And all manufactories are declared to have the same priviledge as to the education of such young ones; and this to extend, not only to the children of beggars, but also to poor children whose parents are dead, or with consent of the parents, if they be alive: and if any young ones, about 15 years of age, shall voluntarily engage themselves upon the like conditions, and if any of the young ones, so educated, shall disobey their masters when reasonably employed, their masters are hereby warranted to correct them as they judge expedient, life and torture excepted; and if any person harbour or reset any such servant belonging to any other, they shall return them to their master on demand, under the pain of one hundred merks, *toties quoties*, as oft as they shall be required so to do: And if any master shall exact any inhuman or too rigid service from any such servant, the Sheriffs, or Justices of Peace, upon application of the servants, are to judge in the case, and if the severity so deserve, the servant may be loosed from such a master, the servant, or some for him, paying the master as much yearly as the fee of servants of that

quality would extend to each year, to the number of years wanting to the 30th year of the servant's age. And the heritors meeting on the days appointed, or major part of them, are authorized and required to conclude and determine matters for that half-year.

And to the end that the poor may be returned to their own parishes, and the nation freed of vagabonds, we strictly require and command all beggars within the kingdom forthwith to repair to their several parishes with all diligence, and to keep the ordinary highways to the same; and so soon as they come to their parish, to present themselves to the heritors and elders, that their names may be listed amongst the poor of the parish, and they lodged and entertained accordingly; with certifications to all who shall be found begging without the bounds of their parish after the said second Tuesday of September next, they shall be seized as vagabonds, *imprisoned, and fed on bread and water for a month*, or till they be sent home to their parish, in manner after mentioned; and if they be found vaguing a second time, they are to be marked with an iron on the face; and all the lieges are hereby prohibited to give any almes to such begging vagabonds, other than bread and water allenarly, after the second Tuesday of September, until they arrive at their own parishes.

And to the end that our will hereanent may be more speedily made practicable, we strictly command and charge all our lieges within this our ancient kingdom, to apprehend such beggars as they shall find vaguing without their own parish after the second Tuesday of September, and forthwith to carry them to the principal heritor of the parish where they were apprehended, if it be in landward, and to one of the baillies in towns, who shall examine the beggar in the shire and parish where he was born, and shall direct him forthwith to the nearest parish that lies in the road to the parish of his birth, and deliver him to the nearest heri-

tor that lies in that highway in the next parish, and so forth from parish to parish in the same road, until he arrive at the parish of his nativity, who shall then list him, and entertain him amongst the poor; and the heritors to whom the vagabonds are delivered, are hereby authorized and required to send two fencible men of their parish to convey every beggar to the heritor of the next parish, and to send a note of the beggar's name and the parish where he was born, which is to be delivered to the next heritor who receives him; and every heritor who receives him is to return a note signed of his reit, and so forth, from heritor to heritor, in every several parish; and if any of the saids beggars offer to make their escape in their transportation, the beggar so doing shall be scourged, and fed with bread and water during the rest of his journey. And whoever gives alms to any beggar not in their parish after the second Tuesday of September, and shall not seize him, in order to his transportation, as said is, shall be fined in 20 shillings Scots, *toties quoties*, to be uplifted by the overseers, and applied to the use of the poor of the parish. And if the heritor to whom the vagabond be brought fail in his duty of sending him, he shall be fined in 20 pound Scots, *toties quoties*, to be applied as said is. If any fencible man, sent to convey them, refuse or fail in his duty, he is to be fined in two merks Scots, *toties quoties*, to be applied as said is; and the said fencible men are to be chosen by turns, as the said parishers.

And whereas by act 18, session 3, Parliament 2, Charles II., correction-houses are appointed to be erected in several burghs therein mentioned, for employing the poor people in work as they are capable, which have hitherto too much neglected, (until the lesser burghs be able to perform what is there required, lest so good a design should totally fail,) we hereby strictly require our burghs of *Edinburgh*, *Stirling*, *Dundee*, *Aberdeen*, *Inverness*, *Glasgow*, *Jedburgh*, *Dumfries*, and *Cupar in Fife*, or such of them as have not already

established correction-houses, in the manner and to the ends prescribed by the said act, to erect and establish such houses, and to receive such poor for work therein as shall be sent to them from any parish, in manner, and on the conditions prescribed by that act and this, but prejudice of erecting of correction-houses in other burghs therein mentioned with all conveniency. Our will is herefore; and we charge you strictly, and command that incontinent, these our letters seen, ye pass to the Market Cross of Edinburgh, and to the Market Crosses of the whole head burghs of the several shires of this kingdom, and there, in our name and authority, by open proclamation, make publication of the premises, that none pretend ignorance: And ordains these presents to be printed.

No. IV.

William and Mary, 29th August, 1693.

A Proclamation of the Privy Council anent Beggars.

William and Mary, &c. Forasmuch as the intent and design of our Proclamation, of date 11th August, 1692, requiring all beggars within this kingdom forthwith to repair to their several parishes with all diligence, hath been much disappointed and frustrated by the uncertainty of the parishes where the said respective beggars have been born, and for want of suitable provision made by the heritors and magistrates of the respective parishes where the said beggars have been born, or had their last seven years' residence; for remeid whereof, we, with the advice of the lords of our Privy Council, strictly require and command all the beggars within this kingdom immediately to repair to the several parishes

where they were born; or where the parish or place of their birth is not certain or distinctly known, that they repair to the parishes where they last resided for the space of seven years together, and to keep the ordinary highways to the several parishes of their birth, or last seven years' residence; and so soon as they come to the said respective parishes, to present themselves to the heritors and elders; and where parishes are vacant, and have no elders, to the heritors alone, whom we, with advice foresaid, require and command to make the provisions necessary for the said beggars, and to list their names among the poor of the parish, that they may be lodged and entertained accordingly, with certification to all who shall be found begging after the *second Tuesday of September* next, they shall be seized as vagabounds, imprisoned, and fed with bread and water for a month, or till they be sent home to the respective parish of their birth, or last seven years' residence, in manner mentioned in our said former proclamation: And we, with advice foresaid, require and command the magistrates of our burghs royal to meet and stent themselves conform to such order and custom, used and wonted, in laying on stents, annuities, or other public burdens, in the respective burgh, as may be most effectual to reach all the inhabitants: And the heritors of the several vacant parishes likewise to meet and stent themselves, for the maintenance of their said respective poor; and to appoint the ingathering, uplifting, and applying of the same for the uses foresaid, sicklike, and in the same manner as the heritors and elders are appointed by our former proclamation: And all the ministers and heritors are hereby required to give timeous intimation to the Sheriff of the shire, if any parish or person shall fail in performance of this Christian duty, in hail or in pairt, and the Sheriff, or Sheriff-depute, are hereby required to call the delinquents before them without any delay; and if guilty, to fine them in double of the quota which the ministers or heritors shall attest to be wanting,

and to cause poind for the same immediately. And further, for preventing of any question that may arise betwixt the heritors and kirk session in the several parishes of this kingdom, about the quota of the collections at the church doors, and otherwise to be made by the said session, to be paid into the heritors for the end foresaid, we do hereby, with advice foresaid, determine the same to be half of the said collections, and ordain the said kirk session to pay in the same from time to time to the said heritors, or any to be by them appointed accordingly; and we ordain our said former proclamation to stand in full force, &c. and to be put in execution, in so far as the same is not hereby altered.

No. V.

WILLIAM and MARY, 31st July, 1694.

A Proclamation for putting former Acts and Proclamations anent Beggars in Execution.

WILLIAM and MARY, &c. Forasmuch as many good laws have been made by our royal predecessors, for maintaining the poor, and relieving the lieges from vagabonds, in prosecution whereof several proclamations have been emitted by our Privy Council, for the better putting the said laws in execution, notwithstanding whereof due obedience hath not been hitherto given to the same, so that the poor are not duly provided for, nor the vagabonds restrained in many places: Therefore we hereby require and command the ministers, heritors, and elders of every parish, and householders, and inhabitants, within the same, respective, to follow forth and give ready obedience to the Acts of Parliament and proclamations of our Privy Council already made: And further, we, with advice

foresaid, require and command the Sheriffs of the several shires, and their Deputies, Justices of the Peace, and Magistrates of the royal burghs of this kingdom, within their several jurisdictions, to take trial how far, and in what manner, the said Acts of Parliament and proclamations of council have been obeyed and put to execution, conform to the tenors thereof; and where any have neglected, or been deficient, and wanting in what is required of them by the said acts and proclamations, to amerciate and fine them therefore, in the manner specified: And if any difficulty shall happen in the after prosecution thereof, through what cause or occasion soever, not provided for by the said laws and proclamations, the magistrates respective foresaid, are hereby required to represent the same to the lords of our Privy Council, that they may give such order thereanent as may bring this good work of relieving the poor, and restraining vagabonds, to the desired issue; for the better effectuating whereof, we, with advice foresaid, nominate and appoint a committee of the lords of our Privy Council to receive in any representation from the magistrates respective above named: And likewise, with power to them to call and convene before them the Sheriffs and other Magistrates respective aforesaid, to whom the execution of the said acts and proclamations are committed, and particularly the Magistrates of Edinburgh, and to examine and take trial of their negligence in the said matter, and to modify the fines and penalties to be exacted from them for the same, and to report their opinion therein to a full council, the first council day of September next. Our will is herefore, &c.

No. VI.

WILLIAM, 3d March, 1698.

Proclamation anent the Poor.

WILLIAM, &c.—That where the many good and laudable laws made for maintaining the poor, and suppressing of beggars, vagabounds, and idle persons, have not hitherto taken effect, partly because there were no houses provided for them to reside in, and partly because the persons to whom the execution of these laws was committed have been negligent of their duty; for remied whereof, we, with the advice of the lords of our Privy Council, ordain the former proclamations formerly emitted, of the date the 11th August 1692, the 29th August 1693, and last of July 1694, ratified and approven by act 29, session 6, of our current Parliament, to be reprinted and put to full and vigorous execution in all points: And in order to make the said proclamations the more effectual, we, with the advice foresaid, revive act 18, sess. 3, Parl. 11, Charles II., in so far as concerns the providing correction-houses for the receiving and entertaining of beggars, vagabounds, and idle persons, within the burghs therein mentioned,—*vix.* one correction-house at the burgh of *Edinburgh*, for those of the town and shire of *Edinburgh*,—one at the burgh of *Haddington*, for those of the shire of *Haddington*, —one at *Dunse*, for the shire of *Berwick*,—one at *Jedburgh*, for the shire of *Roxburgh*,—one at the burgh of *Selkirk*, for the shire of *Selkirk*,—one at the burgh of *Peebles*, for the shire of *Peebles*,—one at *Glasgow*, for the shire of *Lanark*, —one at the burgh of *Dumfries*, for the shire of *Dumfries*, —one at the burgh of *Wigton* for the shire of *Wigton*,— one at the burgh of *Kirkcudbright*, for the stewartry of *Kirk-*

cudbright,—one at the burgh of *Ayr*, for the shire of *Ayr*,—one at the burgh of *Dumbarton*, for the shire of *Dumbarton*,—one at the burgh of *Rothsay*, for the shire of *Bute*,—one at *Paisley*, for the shire of *Renfrew*,—one at *Stirling*, for the shires of *Stirling* and *Clackmannan*,—one at *Linlithgow*, for the shire of *Linlithgow*,—one at *Culross*, for these twelve parishes in *Perthshire*, belonging to the presbytery of *Dunblane*,—one at the burgh of *Perth*, for the rest of the shire of *Perth*,—one at *Montrose*, for the shire of *Kincardine*,—one at the burgh of *Aberdeen*, for the shire thereof,—one at *Inverness*, for the shires of *Inverness*, *Ross*, and *Cromarty*,—one at the burgh of *Elgin*, for the shires of *Elgin* and *Nairn*,—one at *Inverary*, for the shire of *Argyle*,—four in the shire of *Fife*, *viz.* one at *St. Andrews*, one at *Cupar*, one at *Kirkaldy*, and one at *Dunfermline*, for the four ordinary divisions of that shire,—one at *Dundee*, for the shire of *Forfar*,—one at *Banff*, for the shire of *Banff*,—one at the burgh of *Dornoch*, for the shire of *Sutherland*,—one at *Wick*, for the shire of *Caithness*,—and one at *Kirkwall*, for the shires of *Orkney* and *Zetland*,—each of which houses shall have a large closs, sufficiently enclosed for keeping in the said poor people, that they be not necessitate to be always within doors, to the hurt or hazard of their health: And ordains the said magistrates of the said burghs to provide the correction-houses, and appoint masters and overseers for the same, by advice of the presbytery, or such as they shall appoint, who may set the poor persons to work, and that betwixt and the 1st day of October next, under the pain of 500 merks quarterly, until correction-houses be provided for conform to the said act.

But in place of the Commissioners of Excise, mentioned in the same act, we, with advice foresaid, require and command the Sheriffs of the shires and their Deputes to put the said act in execution within their respective shires, as to every thing that by the said act was committed to the Commissioners

of Excise; and ordains the said Sheriffs and their Deputes to give account of their diligence herein, betwixt and the 1st of December, under the pain, every one of them, of 500 merks, who shall failzie and neglect to do the samen, to be employed for the use of the poor of the shire, and to be liable in £100 weekly, after the said day before they return an account of their diligence to our Privy Council, to be employed for the use foresaid.

And ordains the several parishes within every shire and district, to send their poor to the magistrates of the towns where the correction-houses are to be provided, against the 1st day of November next, that they may be put into the said correction-houses: And in case the said correction-houses be not ready to serve the poor against the said day, ordains the poor to be sent to be maintained by the magistrates of the burgh who were to provide the said correction-houses, and that aye and while the correction-houses be provided; and that by and attour the foresaid penalties imposed by the said Act of Parliament, in case of failzieing of providing the said correction-houses against the said day: And, in the meantime, before the said correction-houses be provided, ordains the said acts and proclamations of our Privy Council to be put to full execution.

And because there may some questions arise in putting the said acts in execution, for which there can be no general rule set down, in respect of the different conditions and circumstances of several places of the country, therefore, that the said act may be more effectually, and with greater expedition, put in execution, we, with advice foresaid, give power and warrant to the ministers and elders of each parish, with advice of the heritors, or so many of them as shall meet and concur with the ministers and elders, upon intimation to be made by the minister from the pulpit upon the Sabbath-day before, to decide and determine all questions that may arise in the respective parishes in relation to the ordering and disposing of

the poor, in so far as it is not determined by the laws and Acts of Parliament, and the former Acts of our Privy Council, which are ratified by the Act of Parliament foresaid. Our will is herefore, and we charge you strictly, and command that incontinent, these our letters seen, ye pass to the Market Cross of Edinburgh, and remanent Market Crosses of the head burghs of the several shires and stewartries within this kingdom, and thereat, in our name and authority, by open proclamation, make intimation hereof, that none may pretend ignorance: And ordain these presents to be printed.

No. VII.

OPINIONS OF THE JUDGES OF THE SECOND DIVISION, IN THE CASE OF THE ABBEY PARISH OF PAISLEY, v. RICHMOND AND OTHERS.

(From the Notes of the Right Hon. the Lord Justice Clerk.)

Lord Justice Clerk.*—After due consideration of this case, and the Acts of Parliament and proclamations, I have come ultimately to the same conclusion with the Lord Ordinary.

The question is certainly one of general importance, and had the petitioners' construction of the statutes and proclamations been shewn to be supported by practice and a series of decisions, as is asserted, it would have been a very delicate question whether they could now be departed from, al-

* This is his Lordship's opinion, as written immediately after the abstract of the case, in his Lordship's note-book. It was delivered to the same effect in Court at advising the cause.

though a different construction ought originally to have been adopted.

But the decisions referred to have been well explained in the answers, as in fact having relation to questions of patrimonial right between individuals and parishes, or between parish and parish, and that they did not raise the question which here occurs, which in truth is, whether the Sheriff has the power to alter the determination of the heritors and kirk session, in regard to the two questions noticed by the Lord Ordinary?

Now do the statutes confer such a power of control or review over the decision of those in whom, it seems conceded, the exercise of the duty is in the first place absolutely vested?

I have not been able to discover where it is conferred. All the provisions in the statutes and proclamations, as to Sheriffs and other officers being directed to see the laws put to execution, are easily referable to those regulations of police which run through so many of the enactments, and to the enforcing upon such parishes as are refractory the taking the affairs of the poor, or claimants of relief, into consideration.

Had the advocators refused to pronounce any deliverance at all on the claim of the petitioners, it might perhaps be a question whether the Judge Ordinary might not have power to ordain them to proceed according to the rules of law; and at present I incline to think that he would have this power. But that is a very different question from his having the jurisdiction of reviewing and altering their determinations.

There is in the interlocutor a reservation sufficiently broad of a right to come to the Supreme Court, to ascertain any legal right that may be supposed to belong to the petitioners.

Lord Glenlee.—I think the interlocutor is well founded. I do not say what power the Sheriff would have, had the pa-

rish done nothing whatever. It is very possible that he might *cum effectu* have ordained the heritors and kirk session to meet and execute the laws. Here, however, the heritors have decided, and it is beyond the Sheriff's power to order them to alter.

Lord Craigie.—I am of the opinion that has just been delivered. The regulations as to the poor of Scotland are loosely worded; but they have been well and judiciously explained by practice. There is no example of a Sheriff attempting to control the heritors and kirk session. In such a case as this the Sheriff has no right to interfere.

Lord Robertson.—By the terms of the Lord Ordinary's interlocutor, the only question is as to the jurisdiction of the Sheriff. By the existing law, the heritors and kirk session of every parish are bound to afford relief to paupers, and the latter are entitled to claim that relief. I conceive that it is absurd to hold the decision of the heritors and kirk session to be final; and I think that the power of review lies with the local magistrate, unless excluded by statutes, practice, or usage. I therefore entertain great doubts of the Lord Ordinary's interlocutor, and think that the Sheriff has pronounced a competent judgment.

Lord Bannatyne.—My opinion coincides with that of the majority of the Court, and nearly on the ground stated from the chair. I think that the Sheriff has no power to review the decisions of parochial meetings. Although, if they refused to meet to consider the case, I conceive that the Sheriff could ordain them to meet and proceed.

No. VIII.

OPINIONS OF THE JUDGES OF THE SECOND DIVISION, IN THE CASE OF HIGGINS *v.* THE BARONY PARISH OF GLASGOW.

(From Notes taken by the Author.)

LORD PITMILLY.—There are two questions involved in this case: 1. Whether it is competent to review by advocation the order of the heritors and kirk session? and, 2. Whether the judgment refusing relief, on the ground of the applicant being an Irishman, is well founded?—1. Assuming that the applicant is a proper object of relief, the heritors and kirk session are bound, by the Acts of Parliament, to give aid; they have no discretion to refuse relief where the person is a proper object; and if so, the jurisdiction of this Court cannot be disputed. Whether the heritors and kirk session are to be considered as a parliamentary board or not (and I rather think that is their proper character,) it has been decided that no inferior court can review their proceedings; but they must be subject to some control, which is that of the Supreme Court. The heritors and kirk session are the body to whom application for relief must be made in the first instance; they are bound to decide, and if they withhold relief improperly, the Supreme Court has, without doubt, a power to control them.—2. As to the question on the merits, it is a subordinate point. I have, however, no doubt, but that the applicant, although a foreigner, is entitled to relief—it not being disputed that he has resided industriously in the parish for seventeen years, and is now an aged and infirm pauper.

LORD ROBERTSON.—It has been settled that the Sheriff

has no power of review; and I cannot hold that the powers of the heritors and kirk session were vested in them without control. The Lord Ordinary, however, has made a very proper distinction in remitting to the heritors and kirk session to fix the quantum of aliment.

When the Acts of Parliament regarding the poor were passed, our intercourse with foreigners was more contracted than now. But the principles of our law are not so narrow as to exclude from the benefit of a legal provision, foreigners who have acquired an industrial residence, and benefited the parish by their labour.

Lord Craigie.—I am of the same opinion. Unless the jurisdiction of the Supreme Court be expressly excluded, it must have the power of controlling the proceedings of the heritors and kirk sessions. That a foreigner may obtain a settlement, appears from the directions to expel stranger vagabonds.

Lord Glenlee concurred with the other judges.

Lord Justice-Clerk.—I am clearly of opinion that it is competent for this Court to review the decisions of the heritors and kirk session; and if they had awarded an elusory aliment, the Court would have the same power as in this case, where they have refused relief altogether. On the merits, I conceive that there is nothing in the statutes which indicates an intention to exclude from the benefit of our poor laws, foreigners who have obtained a settlement, and are otherwise proper objects of relief.

No. IX.

Form of Assignment of Pension, under the 6th Geo. IV. c. 27.

I (naming the pensioner or other applicant, and stating such particulars as shall be requisite,) do hereby assign to the heritors and kirk session of the parish of , the next payment of the pension, at the rate of per diem, (or as the case may be) granted to me as and payable from , in order to secure to the said parish of the repayment of the sum of advanced to me (or of the weekly sum of ordered or agreed to be advanced to me, *as the case may be*) by such heritors and kirk session.

Signed by the above named before me, one of his Majesty's Justices of the Peace for this day of

[This assignment, which is exempted from stamp-duty, duly attested by a Justice of Peace, is to be transmitted under cover to the Paymaster-General of his Majesty's Forces —the Paymaster of Pensions at Greenwich Hospital—the Paymaster of Royal Marines, or the Secretary of the Board of Ordnance respectively, according as the applicant is a Chelsea, a Greenwich, a Royal Marine, or an Ordnance pensioner; and on the cover is to be written the words, 'Chelsea pensioner,' 'Greenwich pensioner,' 'Royal Marine 'pensioner,' or 'Ordnance pensioner,' as the case may be.]

No. X.

JAMES GAMMELL, Suspender—*Cockburn.*
W. WEIR AND J. BARR, Collectors of the Poor's Rates of Greenock, Chargers.—*Moncrieff—A. Dunlop, jun.*

The three parishes of Greenock, which consisted of the two burghs of barony, Greenock and Cartsdyke, and a considerable landward district, were united, in so far as regarded the management of the poor, by an act of Parliament passed in 1817, which further made provisions for the appointment of a committee of appeal out of the heritors and kirk session, and declared that the sum necessary for the support of the poor, over and above the collections at church doors, should be levied by assessment, and 'paid, 'the one half by the heritors, and the other half by the ten-'ants and possessors, in the manner prescribed by law.' An assessment had for some years been necessary, and the mode in which it was imposed was as follows:—The whole sum to be assessed was divided into two parts: one half was laid on proprietors of heritable property within the parish, whether in the town or country, according to the real rent of the several properties, allowing a certain deduction to proprietors of houses for repairs, and exempting altogether those landlords whose rents did not exceed £6 yearly. The other half was apportioned among all the householders or inhabitants of the parish, according to the estimated amount made by assessors annually appointed, of their respective incomes, from whatever source derived, excepting land; exempting, however, all whose incomes did not exceed £40. In this class were included, not merely tenants, but also heritable proprietors residing in the parish, who were already assessed in their share of the half laid on heritors—an heritor who was also

an inhabitant being first assessed in his share of the one-half in proportion to the rent of his property, and then in a share of the other half in proportion to his estimated income, from whatever sources arising, excepting land. Mr. Gammell, the complainer in this action, had been a merchant and banker in Greenock, but before this question arose he had retired from business, and he resided the greater part of the year on a small property of about thirty acres, in the immediate vicinity of Greenock, which he entirely occupied himself. He had also considerable estates in Aberdeenshire, where he resided during the rest of the year; and he was further possessed of large personal funds, invested in the public stocks, in loans, &c., in different parts of the country, very little of it, if any, being vested locally within the parish of Greenock. In apportioning the assessment for the poor, Mr. Gammell was, in the first place, assessed as an heritor in a proportion of the half laid on that class, effeiring to the rent of his property; and, in the second place, he was rated as an inhabitant or householder, and subjected in payment of a share of the half laid on that class, in a per centage on an income of £3200, estimated as arising from his whole personal estate, or means and substance, exclusive of his landed property in the parish of Greenock or elsewhere. Against this assessment Mr. Gammell appealed to the committee of appeal under the local act of Parliament, and they having confirmed the rate, he brought a suspension as of a threatened charge, on the grounds—

1. That the mode of assessment was illegal, in so far as resident heritors were assessed in the double character of heritors and householders, or inhabitants; and in so far as the rate levied from the latter class was imposed according to a direct estimate of their whole means and substance, and not according to the rent of the heritable property occupied by them.

2. That the exemption of proprietors whose rents did not

exceed £6, and of householders whose income did not exceed £40 yearly, was contrary to law; and,

3. That the assessors had apportioned the assessment on the several inhabitants or householders very unequally; but he did not aver that they had done so wilfully, nor did he allege that the income on which he was assessed was not within the true amount of his income arising solely from personal estate.

This suspension came before Lord Cringletie as Ordinary, who, after considering memorials by the parties, appointed the suspender to condescend on the facts alleged by him, in support of his reasons of suspension, the chargers on the mode of assessment adopted by them; and on advising these condescendences, with answers, his Lordship, while he ordered certain allegations of the suspender to be more particularly attended to, issued a note, in which he intimated his opinion, 'lst, That the general system of assessment ought to be 'approved of; 2dly, That the plea against the exemption of 'tenants and inhabitants, not having an income of above '£40, and landlords whose rents do not exceed £6, should 'be repelled.' The condescendences and answers having again come before his Lordship, he accompanied an order on the suspender to give in replies, with the following note:—

'He would wish to warn Mr. Gammell, that it is out of 'all sight improper, to think of bringing the merits of every 'assessment for the poor to be discussed in this Court; by 'which the Lord Ordinary alludes to the point, whether this or 'the other person is accurately rated according to his income. 'These are inquiries altogether improper for the investigation 'of this Court, and which cannot be investigated without 'monstrous expense and delay, and of course cannot be cor-'rected for the year in which the assessment is made, other-'wise the poor would starve. If *wilful injustice* have been 'committed, that is quite another view of the case; for, in 'that event, the Court will do its best to give redress, and

'prevent it in future. The Lord Ordinary intreats Mr. 'Gammell's attention to this manifest distinction between 'casual error (even if it have happened, which may or may 'not have occurred,) and wilful injustice, in knowingly and 'wilfully giving indulgences where none were due. If Mr. 'Gammell be satisfied that wilful injustice has been done, 'let him say so directly, and there will be an issue.

'As to the statement, that the expenses of a lawsuit with 'himself were included in the assessment for the poor, it is 'denied. Mr. Gammell must be pointed in replying to this 'in his replies.'

Replies being lodged, his Lordship appointed the chargers to duply, chiefly in reference to the allegation by the suspender, that the expenses of a former lawsuit with himself had been included in the assessment. The answers on this point having been satisfactory to his Lordship, he finally pronounced the following interlocutor in the cause:—

'The Lord Ordinary having resumed consideration of this 'process, and advised the mutual condescendences for the par-'ties, mutual answers thereto, replies, duplies, productions, 'and whole procedure: Finds, that this is a process of sus-'pension of a charge to James Gammell, Esq. for his pro-'portion of the contribution to the poor in the three united 'parishes of Greenock for the year 1817; and that the reason 'for the chargers' consenting to the form of a suspension be-'ing used, was to obtain dispatch, so as to put an end to all 'disputes of the like kind in future: Finds, therefore, that 'the object of the action was to settle the principle on which 'the assessment was to be made; because, that being once 'ascertained, would prevent disputes in future; but not to 'enter into minute questions, whether individual incomes 'were correctly rated or not, because disputes of that sort 'may originate yearly; and besides, it neither can be, nor is 'the province of this Court to enter into investigations of that 'nature, occurring of necessity in assessments for the poor,

'unless where wilful injustice or corruption is alleged:*
'Finds, that no acts of wilful injustice are stated, nor even
'mistakes, in so pointed a manner as to call for the inter-
'ference of the Court: Finds, that it is a part of the duty of
'those who make assessments for the poor to take into con-
'sideration the question, on whom the burden shall be im-
'posed? and that the assessors had a right to exempt those
'who they thought were unable to bear it: Finds, that the
'exemption of tenants and inhabitants not having an income
'of above forty pounds yearly, and of landlords whose rents
'did not exceed six pounds yearly, is not a measure which
'warrants the interference of this Court; and therefore repels
'the objection to that general principle which has been a-
'dopted with the general consent and approbation of the her-
'itors, ministers, and elders of the said three parishes, and of
'which the suspender is the single complainer: Finds, that
'there is no room for the complaint, that the assessment for
'1817 was laid on for a sum including the expenses of a
'process with the suspender himself; and that the evidence
'to which he refers disproves that idea, because the letter
'quoted by him, containing the expenses of that process, and
'of course making it known to the assessors for the poor, is
'dated only the 1st February, 1819; so that the expense,
'which till then was unknown, could not be included in the
'total sum for which assessment was made in 1817; and,

* The judges did not at the advisings specially allude to the objections here referred to by the Lord Ordinary, but the following opinion of the Lord Justice Clerk on these points, is contained in his Lordship's note-book, of which I have been kindly permitted to avail myself in drawing up this report.

'As to the charges of partiality, think the rule adopted in the decision referred 'to, that unless *gross partiality and corruption* are stated, they can't be listened 'to, is sound; and at all events, their investigation ought not to bar payment of 'the assessment in the meantime, even if it were competent under this suspen-'sion, when no appeal was taken on that ground.

'Am rather disposed to think that the power of exempting must lie with the 'general body—though it is one subject to control, and if carried too far, it 'would certainly lead to an increase of the numbers claiming relief.'

'therefore, on the whole, Finds the letters orderly proceeded, 'and expenses due to the chargers, the taxation of which re- 'mits to the auditor of court: And as the Lord Ordinary has, 'over and over, advised this cause on written pleadings, he dis- 'penses with a representation, and recommends the suspend- 'er, if he is dissatisfied with this interlocutor, to apply to the 'Court for redress, and decerns accordingly.'

The suspender then presented a reclaiming petition to the Inner-House, in which, although he still founded on the allegations of inequality, and on the exemptions objected to, he chiefly rested his case on the alleged illegality of the principle on which the assessment was levied. In reference to this, he maintained—

1. That an heritor in a landward parish, though resident, and the occupier of his own land, could only be assessed in the single character of an heritor, according to the real or valued rent of his property; and that the sole effect of his occupying his own land, was to deprive him of the relief he might otherwise have against his tenant for the half of the assessment imposed on him.

2. That even if a residing heritor who occupied his own lands, could be assessed among the class of inhabitants, it could only be as a possessor in a proportion corresponding to the rent of the heritable property so occupied by him, and not according to an estimate of his means and substance; and—

3. That at all events, his means and substance locally vested within the parish, could alone be taken into account, and not his means and substance whenever situated.

These positions he supported by nearly the same arguments as those mentioned in the text, in reference to this subject; and they were attacked, on the other hand, by the pleas which will be found there also.

The Court, in order to remove some supposed difficulty arising from the local Act of Parliament, and the character of the parish of Greenock, as containing two burghs of bar-

ony, as well as a country district, before deciding the case, appointed memorials with reference to these points; but both parties agreeing that the Act of Parliament made no essential difference on the case, and that the parish of Greenock must be held in law as a landward parish, the Court proceeded to advise the case on that footing.

Lord Robertson.—I think the Act 1817 has no influence on this question, it just leaves the assessment to be made according to law. Then the question just comes to be as to the legal mode of assessment, on heritors, tenants, and possessors in a landward parish. I lay out of view the case of Royal Burghs, such as Edinburgh and Glasgow, as the usage adopted in them does not apply to landward parishes. In a mere country parish every landed proprietor is an heritor, and must bear his part of the expense laid on heritors by the Act 1663, viz. half of the assessment. The term 'otherwise,' in that Act, means only some mode of assessment applicable to the land. The real difficulty here, is as to the mode of assessing tenants. The report of the General Assembly to Parliament shews, that heritors, in possession of their land, pay both as proprietors and tenants; but the question is, whether tenants and possessors can be assessed on their personal estate. As to tenants, the rent of their land is usually adopted, and it is a good criterion, and I am not for disturbing the practice; but as to possessors or inhabitants not connected with land, the personal property must be looked to. I apprehend, however, this is to be confined to the personal property *within* the parish, and not to property in every part of the earth. It is said, that moveables, in the eye of law, are held to be situated at the domicile of the party; this is certainly true as to the law of intestate succession, but not further.

Lord Glenlee.—I cannot hold the Act 1817 as making no difference, since it makes a provision, that the assessment is to be paid 'one half by the heritors, and the other half by

'the tenants and possessors, according to law.' Now, although it is clear, that the Act 1663 is not to be followed, but the Act 1579, I think there must necessarily, under this clause of the local Act, be a distinction made as to heritors and tenants. I think the Act 1579 is the true rule for the maintenance of the regular poor up to this day, and must regulate the matter. The last Scotch Act, 1698, c. 21, re-enacts a variety of statutes, and among the others, that of 1579—no doubt it also ratifies the Act 1663; and if these are opposite, the Court is put in difficulty. But there is no opposition. The statute 1579 provides for the repressing of beggars; but the fund directed by it to be raised, is only to provide for the real poor by assessment on the haill inhabitants 'according to the estimation of their substance, without exception of persons;' and no distinction is made between towns and landward parishes. Then the Act 1663 sets out with recognising that Act 1579, as the rule for the maintenance of the poor in the case provided, but it goes on to make provision for the employment of vagrants; and it is in regard to the allowance for that purpose alone, that the assessment, under the statute 1663, is provided. The proper poor are not contemplated in that statute, nor is any such scheme as to divide the assessment between heritors, tenants, and possessors, provided in regard to the assessment for the regular poor. In practice, however, such a distinction has been adopted in landward parishes, and I am not for disturbing the practice, although the fundamental rule of the statute is, that the burden is to be laid on the whole inhabitants according to their means and substance. But here, at all events, under the local act, one half must be paid by the heritors, and the other by the tenants and possessors. I incline to hold with Lord Robertson, that the occupiers of their own land are liable also *qua* tenants. Besides, this local statute provides an appellate jurisdiction, which implies, that if an appeal is not made, the assess-

ment cannot be suspended. So, if one ground of objection is taken, others must be held as not taken. Here the whole complaint was, that the whole means were taken in. Therefore, the question is, whether the means must be within the parish; and on this point, I cannot doubt that Mr. Gammell is liable, at his domicile, on his whole means wherever situated, unless he can qualify that he is liable elsewhere in some part of his substance, because this is his domicile. The assessment for the support of the ordinary poor is the enforcement of the christian duty of charity, which ought to be performed according to the ability of each to afford it, and it is quite different from the case of a local assessment, for purposes of police, as the employment of vagabonds. I can see no distinction as to this matter between landward parishes and burghs; and in Dreghorn's case, all pleas of hardship were disregarded. In burghs, by a special statute, inhabitants are declared liable only for their livings within burghs, and the reason is given, because their lands are taxed elsewhere; but mere personal means cannot be taxed elsewhere than at a man's domicile: dividends in the funds must be liable, just because it pays no tax; and I conceive every thing may be taken into view except land.

Lord Craigie.—I am of Lord Glenlee's opinion, although I certainly had not adverted to the construction of the statutes 1579 and 1663. If adopting the former, the whole would be laid on all rateably. The whole personal substance, wherever situated, must be subjected in regard of the domicile, as otherwise a great part of what is the proper subject of assessment would be exempted.

Lord Bannatyne.—If going on the words of the statutes alone, I can see no distinction between burghs, and towns, and country parishes; the words are general, that the assessment is to be laid on according to means and substance; and I have great difficulty in limiting it to personal property within the parish. But I do not think practice warrants any assess-

ment in landward parishes on personal property; and I should wish to see the practice more fully explained.

Lord Justice Clerk.—In the memorials the parties seem pretty much agreed, that the circumstances of these united parishes, including two burghs of barony, can make no alteration on the legal rule of assessment; and that what is peculiar to royal burghs, where the magistrates assess, is inapplicable to this case; and I think this proposition is clearly made out, as neither the statutes nor proclamations make any distinction between landward parishes and towns or burghs of barony.

Again, I do not think the act 1817, uniting the three parishes *quoad* the assessment for the poor, establishes any other rule, as the assessment is to be laid on according to the rules of law.

Now this being the case, I am at a loss to see how the cases of Dreghorn and Carrick, from the city of Glasgow, can have any influence on the present question.

Holding this then merely as a landward parish having a town within it, Is the suspender liable to be assessed not only as an heritor but also *qua* tenant, possessor, or householder? And as such last, liable according to an estimate of his whole moveable property, wherever situated?

I do not think he can seriously object to his being assessed as tenant for the lands occupied by himself. But it is a very different question, whether he is liable for his whole means and substance, *wherever situated.*

I can find no decision in which such a mode of assessment has been sanctioned in similar circumstances; and I see in the judgemnt of the inferior Court, in the case of Dreghorn, which was sanctioned here by remitting *simpliciter*, an express admission, that Dreghorn would not elsewhere be liable for his personal property.

In the case of West-Kirk, nothing but an appeal to the *real rent* was sanctioned, although the parish had become

covered with *houses*. And in the recent case of Cargill, the estimate of *means and substance* was expressly confined as arising *within the parish*.

Here a vast departure from this rule is attempted, and I doubt if the particular circumstances of the united parish is sufficient to sanction it.

His Lordship then put the question, 1st, Is Mr. Gammell liable to be assessed both as an heritor and as a tenant or possessor?

The Court on this point were unanimous, that Mr. Gammell was liable to be assessed in both characters.

Lord Justice Clerk.—Then is he liable to have the assessment imposed on him as a possessor, according to his means and substance, wherever it lies, or only on his means and substance within the parish?

Lord Robertson, with the Lord Justice Clerk, voted that he was only liable on his means and substance within the parish. Lords Glenlee and Craigie, that he was liable on his means and substance wherever situated.

Lord Bannatyne.—I do not think he is liable according to a direct estimate of means and substance at all; but if means and substance are to be taken, it must be his whole means and substance, wherever situated.

Lord Justice Clerk.—As there is so much division of opinion on the bench, I would propose, before finally deciding this point, that there should be an investigation as to the practice.

The other Judges having gone into this proposal, the following interlocutor was pronounced (May 31, 1822):—

'The Lords having resumed consideration of this petition, 'with the answers thereto, and mutual memorials for the par- 'ties, they adhere to the interlocutor complained of, in so far 'as they repel the petitioner's objections to be assessed on 'his means and substance as a tenant or possessor, as well as 'on his lands as an heritor; and to that extent they refuse 'the desire of the petition. But before further answers as

'to the other points of the cause, appoint the petitioner to 'put in a special condescendence, in terms of the act of sede- 'runt, as to the practice in landward parishes of assessing 'tenants and householders, whether it has been the practice to 'assess such persons on their whole means and substance, 'wherever situated, or merely on their means and substance 'situated within the parish.'

No further procedure took place, the cause having been taken out of Court, by the suspender consenting to pay the assessment as imposed on him; each party bearing their own expenses of process.

Corrie and Welsh, W.S.; D. Horne, W.S. Agents.

No. XI.

ACT OF SEDERUNT, CONCERNING THE POOR'S ROLL. 16th JUNE, 1819.

WHEREAS, by the 45th Act of the second Parliament of James I. in the year 1424, a provision was made for appointing advocates to assist indigent persons who cannot afford the expense of prosecuting their just claims in courts of law. And whereas, acts of sederunt concerning the poor's roll were passed on the 20th November, 1686; 9th June, 1710; 16th June, 1742; 10th August, 1784; and 11th July, 1800. And whereas, the poor's roll has of late years increased in number, in a proportion greater than the circumstances of the times seem to warrant, whereby there is reason to believe that many persons have got upon the poor's roll who are not proper objects for it, and have thereby obtained a great advantage over their adversaries, some of whom are often in circumstances little better than themselves. And whereas, it is therefore expedient that provision should be made,

which, while they secure the benefit of the poor's roll to those who really deserve it, may at the same time exclude those who are not proper objects: Therefore, the Lords ordain,

1*mo*, That the Faculty of Advocates, according to their present practice, shall appoint six of their number annually to be advocates for the poor; and that the Writers to the Signet, and also the agents or solicitors, shall each nominate, in the month of December annually, as at present, four of their members respectively to be writers and agents for the poor; and shall, immediately after such nomination, give into the senior clerk of each division a list of the persons so appointed, which list shall be entered in the books of sederunt.

2*do*, That no person shall be entitled to the benefit of the poor's roll, unless he shall produce a certificate under the hands of the minister and two of the elders of the parish where such poor person resides, setting forth his or her circumstances, according to a formula hereto annexed.

3*tio*, That if the party's health admits of it, he or she shall appear personally before the minister and elders, to be examined as to the facts required by said formula; and the minister and elders shall then certify how far the statement given by the party consists with their own proper knowledge, or that of any one of them; or whether its credit rests solely on the statement of the applicant; in which case they shall certify whether he or she be of good character, and worthy of credit.

4*to*, That ten days' previous intimation shall be given to the adverse party, of the time and place fixed for making the said declaration or statement before the minister and elders; of which intimation, evidence must be produced to the minister, under the hand of a notary-public, messenger-at-arms, sheriff or town officer, or other officer of law.

5*to*, That said declaration of the party, and certificate of the minister and elders, with the certificate of intimation to

the adverse party, shall be the warrant for a petition to the Court for the benefit of the poor's roll, which petition need be in writing only, as at present; and shall be boxed only to the President of the Division; and to the copy so boxed shall be appended a copy of the declaration of the party, and certificate by the minister and elders.

That on moving this petition, if the above requisites have been complied with, the Court shall pronounce an interlocutor, ordering intimation in the minute-book, and on the wall for ten days; after the expiration of which period, the petition shall be again moved by the Lord President; and shall be remitted, as at present, to the lawyers and agents for the poor, to report whether the petitioner has a *probabilis causa litigandi.*

6to, That, besides considering the *causa litigandi*, the counsel and agents to whom the remit is made, shall hear all objections which may be offered by the adverse party, to the truth of the statement contained in the declaration and certificate of poverty; and shall be entitled to demand further evidence, in regard to any particular that may require to be farther proved, and report thereon to the Court, in the same manner, and with the same powers as they at present report on the *probabilis causa litigandi.*

7mo, That if the Court shall find the petitioners entitled to the benefit of the poor's roll, the counsel and agent who shall have made the report, shall be appointed to conduct the petitioner's cause, and shall continue to do so till its conclusion, or as long as the petitioner remains on the poor's roll, notwithstanding they may have ceased to be advocates and agents for the poor.

8vo, That no warrant for the benefit of the poor's roll shall remain in force for a longer period than two years from its date; and if an application shall be made for renewing it, such application shall be made by note to the Lord President of the Division, and shall be accompanied by a report from

the counsel in the cause, stating whether it appears to him or them that the petitioner has still a *probabilis causa litigandi*, and giving a concise detail of the steps which have been taken for bringing the process to a conclusion, and the cause which appears to have prevented a final determination; which note shall be duly intimated to the agent for the adverse party in common form, before boxing it to the Lord President.

9*mo*, That on or before the sixth sederunt day of each winter session, the advocates and agents for the poor shall box a report, to the Lord President of each Division, of the actual state of the poor's roll of that Division, the number and names of the persons then enjoying the benefit of it, with the dates of their several warrants of admission or renewal, and any special matter relating to that roll generally, or any particular case which they may think the Court ought to know.

10*mo*, That, in like manner, the principal clerks of each Division shall, on or before the sixth sederunt day of each winter session, make up and report to the Lord President of each Division, an abstract of the number of applications which may have been presented for the benefit of the poor's roll during the year preceding, with the manner in which they have been disposed of.

11*mo*, That when the Court shall remit a petition to the advocates and agents for the poor to consider, and report on the *causa litigandi*, as above, it shall be the duty of the writer to the signet, or agent named in the remit, to procure from the petitioner, or his former agent, information as to the circumstances of the case, and to draw up a full memorial thereof, and lay the same before the advocates and agents named in the remit, for enabling them to make their report; and, if further evidence or explanation appears to be necessary, either as to the poverty of the petitioners or circumstances of the case, such agent shall direct and assist the petitioner in procuring the same.

12*mo*, That the names of the advocates and agents to whom such cause is remitted, shall be marked on the margin of the summons and defences, or letters of advocation and suspension, and on the back of every subsequent paper given in for that party in the cause; and no enrolment shall be made except by the agent appointed as above; and the word 'Poor' shall be prefixed to the name of the said party, on every paper given into the Court.

13*tio*, That no other advocate or agent, than those appointed as above, shall be employed, or allow their names to be used in any stage of the cause, unless on application to the Lord Ordinary or the Court, by a note to be signed by the advocate and agent already appointed, the assistance of one of the other advocates or writers for the poor shall be specially authorized; in which case, those first appointed, and those so added, shall thereafter act conjunctly in the cause.

14*to*, That in case of neglect or failure in any of the particulars above specified, the Court, on the application of the adverse party, shall open up and set aside the previous proceedings in the cause, and deprive the party of the benefit of the poor's roll, or may apply such other remedy as the circumstances of the case may require.

Formula for the use of the Clergy in framing Certificates of Poverty, before referred to.

'We, the undersigned minister and elders of the parish 'of , do hereby certify, that on the 'day of , A. B. residing at , applying 'for the benefit of the poor's roll, to enable him (or her) to 'carry on a lawsuit about to be brought (or presently de-'pending) before the Court of Session, appeared personally 'before us, and did, in our presence, emit the following 'statement in regard to his (or her) circumstances and situ-'ation.

'That he (or she) is years of age.

'That he (or she) is married, or unmarried, as the case 'may be.

'That he (or she) has number of children under 'such an age, or in such and such circumstances.

'That he (or she) has resided in this parish for so long.

'That he (or she) is possessed of such and such property. [Here state particularly the applicant's property of every description.]

'That he (or she) is of such a trade; in which his (or 'her) earnings amount to so much.

'That he (or she) has, or has not, at present any other 'lawsuit depending before this or any other court, (or if the 'applicant has any other lawsuit, the case should be *particu-'larly mentioned.*)'

Signed by the applicant, the minister, and elders.

The minister and elders are hereby required to add whether the *whole* or *any*, and what part of the foregoing statement is consistent with their own proper knowledge, or with the proper knowledge of any one of them; or whether its credit is to depend on the statement of the applicant himself; or, if the case admit of it, they may add any other *causa scientiæ* that may occur to them.

And the Lords appoint this act to be entered into the books of sederunt, and printed and published in the usual manner.

(Signed) C. Hope, I.P.D.

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*** *The reference is to the Paragraphs.*

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* In a case decided by the First Division since this edition was printed, it has been found that if a parish grant relief to a poor person, without obtaining from him a disposition to his property, they cannot after his death have recourse on such property as he may die possessed of. M'Lachlan *v.* Kirk-Session of Stevenson January 25, 1828.

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